

## **AGENDA**

### **GALLUP CITY COUNCIL TUESDAY, JANUARY 12, 2016 SPECIAL MEETING – 4:30 P.M. REGULAR MEETING – 6:00 P.M. CITY COUNCIL CHAMBERS**

Jackie McKinney, Mayor

Linda Garcia  
Councilor, District #1

Allan Landavazo  
Councilor, District #2

Yogash Kumar  
Councilor, District #3

Fran Palochak  
Councilor, District #4

Maryann Ustick, City Manager  
George Kozeliski, City Attorney

#### **SPECIAL MEETING – 4:30 P.M.**

**A. Roll Call**

**B. Work Session**

1. Electric Ten-Year Financial Plan – Richard Matzke, Director, Gallup Electric Department

**C. Recess Until 6:00 P.M.**

#### **REGULAR MEETING – 6:00 P.M.**

**A. Pledge of Allegiance**

**B. Roll Call**

**C. Approval of Minutes**

Special and Regular Meetings of December 8, 2015  
Special Meeting of December 15, 2015

**D. Presentation of Commendation**

Peter Becenti, Jr., Park Supervisor

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### **E. Discussion/Action Topics**

1. Resolution No. R2016-2; Acceptance of Legislative Appropriation 15-0942 for the Allison Road Bridge Construction Project – Stan Henderson, Public Works Director
2. Resolution No. R2016-3; Acceptance of Legislative Appropriation 15-1034 for the Allison Road Bridge Construction Project – Stan Henderson, Public Works Director
3. Resolution No. R2016-4; Acceptance of Legislative Appropriation 15-1029 for the Allison Road Bridge Construction Project – Stan Henderson, Public Works Director
4. Construction Contract Award for Downtown NM 118 Pedestrian Safety Improvements – Stan Henderson Public Works Director
5. Resolution No. R2016-5; A Resolution Adopting a City Residential Anti-Displacement and Relocation Assistance Plan for Calendar Year 2016 – Stan Henderson, Public Works Director
6. Resolution No. R2016-6; A Resolution Adopting a HUD Section 3 Plan for Calendar Year 2016 – Stan Henderson, Public Works Director
7. Resolution No. R2016-7; 2016 Community Development Block Grant (CDBG) Citizens Participation Plan – Stan Henderson, Public Works Director
8. Resolution No. R2016-8; 2016 CDBG Procurement Policy Adoption – Stan Henderson, Public Works Director
9. 2016 CDBG Fair Housing Proclamation – Stan Henderson, Public Works Director
10. Appointment of Terry Proffitt to the Labor Management Relations Board – Mayor Jackie McKinney
11. Appointment of Roger Morris to the Gallup Housing Authority Board of Commissioners – Mayor Jackie McKinney

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### **Discussion/Action Topics, continued**

12. Authority to Proceed with Legal Action to Foreclose the Lien on the Property Owned by B.E.I., Inc. (Doug Bishop) at 405 West Hill – George Kozeliski, City Attorney
13. Ordinance No. C2016-1; An Ordinance Amending the Makeup of the Board Members on the Sustainable Gallup Board – George Kozeliski, City Attorney
14. Award of Contract for Golf Course Irrigation Improvements – Vince Tovar, Gallup Water and Sanitation Director
15. Resolution No. R2016-1; Annual Determination of Notice Under the Open Meetings Act – Alfred Abeita, City Clerk
16. **Public Hearing:** Proposed Issuance of a Restaurant (Beer and Wine) License to G & W Industries, Inc. d/b/a Smokey's, 505 North Highway 491 – George Kozeliski, City Attorney

**F. Comments by Public on Non-Agenda Items**

**G. Comments by Mayor and City Councilors**

**H. Comments by City Manager and City Attorney**

**I. Motion to Adjourn**

*Auxiliary aides for the disabled are available upon request. Please contact Alfred Abeita, City Clerk, at 863-1254 at least one (1) week prior to the meeting or as soon as possible in advance of the meeting to make any necessary arrangements.*

*Pursuant to the "Open Meetings Act", NMSA 1978, Section 10-15-1 through 10-15-4 of the State of New Mexico, this Agenda was posted at a place freely accessible to the public 72 hours in advance of the scheduled meeting.*

## **Work Session Item 1**

**Electric Ten-Year Financial Plan**

**Richard Matzke, Director, Gallup Electric Department**

**(Backup documentation will be provided prior to the meeting)**

## **Minutes**

Special and Regular Meetings of December 8, 2015  
Special Meeting of December 15, 2015

Minutes of the Special Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec Avenue, at 4:30 p.m. on Tuesday, December 8, 2015.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

Mayor: Jackie McKinney

Councilors: Linda Garcia  
Allan Landavazo  
Yogash Kumar  
Fran Palochak

Also present: Maryann Ustick, City Manager

The Mayor and Councilors conducted a work session pertaining to the following item:

1. Proposed Plans for the Metropolitan Redevelopment Area (MRA) and the Arts and Cultural District (ACD) – Maryann Ustick, City Manager

Ms. Ustick provided an overview of the preparation of both plans, which involved obtaining citizen input at public meetings, guidance by the steering committee at monthly meetings and a review by the Planning and Zoning Commission last evening. She asked for the Mayor and Councilors to submit their input and to ask questions pertaining to both plans. The plans will be presented to the Mayor and Councilors for their approval at a special meeting to be held on Tuesday, December 15, 2015. Ms. Ustick introduced Charlie Deans of Communities By Design, who provided a power point presentation on both plans. A copy of the power point presentation are attached hereto and made a part of these official Minutes. Included in the power point presentation on the MRA Plan was an overview of the following 5 projects (out of 27) in the Gallup Downtown Conceptual Plan: a new library at the present Children's Library, transformation of a portion of Coal Avenue into an event's street, four blocks of alleyway improvements, improvements to a fenced-off area on West Aztec where an underground arroyo is located, and a pedestrian underpass at the railroad crossing on Second Street. The projects and recommendations are based on the community's input that was submitted at the public meetings. In presenting the project implementation timeline, Mr. Deans stressed the need for involvement by the private sector for implementing the MRA Plan. Included in the power point presentation on the ACD Plan was an overview of the recommendations for artist, tourist and organizational programming. Mr. Deans asked the Mayor and Councilors for their recommendations for changes to the plans as the final version of the plans will be presented to them for final approval next week.

Discussion followed concerning potential funding for the development of a new library;

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requirements and potential options for the implementation of projects under a Tax Increment Financing (TIF) District; dealing with solid waste collection in the proposed redeveloped alleyways; the proposed pedestrian underpass at the railroad crossing on Second Street; and the procedures for creating and maintaining a TIF District.

There being no further business, the Work Session adjourned until the Regular Meeting at 6:00 P.M.

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Jackie McKinney, Mayor

ATTEST:

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Alfred Abeita II, City Clerk

Minutes of the Regular Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec Avenue, at 6:00 p.m. on Tuesday, December 8, 2015.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

|               |  |
|---------------|--|
| Mayor:        | Jackie McKinney  |
| Councilors:   | Linda Garcia<br>Allan Landavazo<br>Yogash Kumar<br>Fran Palochak |
| Also present: | Maryann Ustick, City Manager<br>George Kozeliski, City Attorney  |

Presented to the Mayor and Councilors were the Minutes of the November 10, 2015 Regular Council Meeting.

Councilor Kumar made the motion to approve the aforementioned Minutes. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Palochak, Landavazo, and Mayor McKinney all voted yes.

The Mayor and Councilors presented a Commendation and Certificate of Retirement to Alice W. Mutte, Head Cook at the Neighborhood Senior Center.

Mayor McKinney recognized the following members of the audience: State Representative Wonda Johnson, former Mayor John Pena and Planning and Zoning Commission Chairman Kent Wilson.

Presented to the Mayor and Councilors were the following Discussion/Action Topics:

1. Approval of Donation Agreement and Acceptance of Quitclaim Deed From Joe and Christine DiGregorio for East Side Playground and Park – George Kozeliski, City Attorney

Mr. Kozeliski presented the proposed donation agreement and quitclaim deed from Mr. and Mrs. DiGregorio for the purpose of constructing a playground at the northeast corner of Basilio Drive and Clay Street.

Mr. DiGregorio said he and his family are proud to be a part of the community and wants to see Gallup grow as it was his father's vision.

Mayor McKinney thanked Mr. and Mrs. DiGregorio for their generosity and wished them

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the very best for the upcoming holidays.

Councilor Landavazo made the motion to approve the donation agreement and to accept the quitclaim deed from Joe and Christine DiGregorio for the east side playground and park. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Garcia, Kumar, and Mayor McKinney all voted yes.

Councilor Landavazo said Rep. Johnson allocated \$100,000 of her capital outlay funds towards the east side park project. Councilor Landavazo thanked Rep. Johnson and Mr. and Mrs. DiGregorio for their contributions to the project.

2. Greater Gallup Economic Development Corporation (GGEDC) Semiannual Update for FY 2016 – Kent Wilson and Michael Sage, Greater Gallup Economic Development Corporation

Mr. Sage provided an overview of the Annual Strategic Work Plan for the GGEDC. He also provided an update of the GGEDC's activity concerning job creation, site visits, prospects, leads and business contacts for the current fiscal year and compared the data to the first two quarters in FY 2015. Mr. Sage provided a summary of the GGEDC's dealings with three business entities that have impacted the job creation component of their activity. The impact has resulted in about 800,000 in new payroll dollars to the community. He also provided information on how contacts are generated through website inquiries, by referrals made from other organizations and by participating in trade show recruitment missions.

Mr. Wilson addressed the Mayor and Councilors regarding the GGEDC's vision for the future. He explained how economic development is a patient process since there are intricacies involved for a company to relocate geographically to our area as well as for a local person to start up a new business. He also said it takes patience to work with local educational institutions to prepare the workforce to meet the visionary demands of the community.

Councilor Palochak made the motion to approve the Greater Gallup Economic Development Corporation Semiannual Update for FY 2016. Seconded by Councilor Kumar. Roll call: Councilors Palochak, Kumar, Garcia, Landavazo, and Mayor McKinney all voted yes.

3. Approval and Acceptance of the Local Liquor Excise Tax Accountability Report for the First Three (3) Quarters of Calendar Year 2015 – Debra Martinez, McKinley County DWI Director

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Ms. Martinez presented the report which summarizes the use of liquor excise tax funds by local programs and agencies during the first three quarters of calendar year 2015. Future reports will be done on a quarterly basis to comply with State requirements.

Discussion followed concerning the allocation of liquor excise tax funds to non-profit organizations during the first two quarters of calendar year 2015 and that there were no liquor excise tax fund allocations to non-profit organizations during the third quarter of calendar year 2015.

Councilor Palochak made the motion to approve and accept the Local Liquor Excise Tax Accountability Report for the first three quarters of calendar year 2015. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Landavazo, and Mayor McKinney all voted yes.

4. Resolution No. R2015-33; A Resolution Changing the Name of a Portion of a Dedicated City Right-of-Way from Hill Avenue to Philip Garcia Court – Clyde (C.B.) Strain, Planning Director

Mr. Strain said a request was submitted by John Pena and George Taira to rename a portion of Hill Avenue to Philip Garcia Court. The portion of Hill Avenue begins at Second Street and terminates at the Court House Square. Mr. Strain said the request was made to honor Philip Garcia for his many years of service to the community by serving as member of the Planning and Zoning Commission for 38 years. Mr. Strain said he had the honor and privilege of working with Mr. Garcia for many years and spoke in favor of the request.

Mayor McKinney recognized the Garcia family in the audience. The Mayor and Councilors also expressed their support of the request as they commented on the personal experiences they had with Mr. Garcia.

Councilor Garcia made the motion to approve Resolution No. R2015-33. Seconded by Councilor Palochak. Roll call: Councilors Garcia, Palochak, Landavazo, Kumar, and Mayor McKinney all voted yes.

5. Resolution No. R2015-34; Gallup Metropolitan Redevelopment Area Boundary Amendment – Clyde (C.B.) Strain, Planning Director

Mr. Strain presented the Resolution to extend the existing boundary of the Metropolitan Redevelopment Area (MRA). The proposed change is based on the input received during MRA Steering Committee meetings.

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Councilor Kumar made the motion to approve Resolution No. R2015-34. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Landavazo, Palochak, and Mayor McKinney all voted yes.

6. **Public Hearing:** Proposed Transfer of Ownership of Existing License #0354 from Love's Travel Stops & Country Stores, Inc. d/b/a Love's Travel Stop #215, 3380 West 66 Avenue to Love's Travel Stops & Country Stores, Inc. d/b/a Love's Travel Stop #215, 3380 West 66 Avenue – George Kozeliski, City Attorney

Mr. Kozeliski said the proposed application for the change of ownership of the license is due to the change in the officers or directors of the corporation. He said the application consists of the same company doing business at the same location with the same dispenser's license. He recommended approval of the transfer of ownership of the license since there are no grounds to disapprove the application.

Mayor McKinney asked if there was anyone to present testimony for or against the transfer of ownership of the license. There was none.

Councilor Kumar made the motion to approve the transfer of ownership of existing license #0354 from Love's Travel Stops & Country Stores, Inc. d/b/a Love's Travel Stop #215, 3380 West 66 Avenue to Love's Travel Stops & Country Stores, Inc. d/b/a Love's Travel Stop #215, 3380 West 66 Avenue. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Landavazo, Garcia, and Mayor McKinney all voted yes.

7. Approval to Proceed with the Sale of City Owned Land at the Corner of Montoya Boulevard and Miyamura Overpass – George Kozeliski, City Attorney

Mr. Kozeliski said the subject parcel was part of the condemnation by the State of New Mexico and the Federal Highway Administration in the 1960's. After Interstate 40 was built, the property was deeded to the City but it can only be used for recreational purposes. If the City wants to change the purpose or dispose of the property, the City is required to pay the fair market value of the parcel to the State of New Mexico. The property is the last remaining property at a major interchange on Interstate 40 that can be developed. A final survey was conducted on the property which resulted in 2.5 acres at a value of \$381,000. The final survey has also been accepted by the New Mexico Department of Transportation (NMDOT). If the City proceeds with the sale of the parcel and if the sales price is in excess of the appraised value accepted by the NMDOT, the City would be allowed to keep the excess amount. In addition, once the property has been conveyed to a private owner, property tax will be generated. If the Mayor and

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Councilors prefer to conduct a public sale instead of a private sale of the property, Mr. Kozeliski and the City Clerk will proceed with the statutory requirements to sell the property.

If the City proceeds with the sale of the property and due to the increased traffic in the area, Mayor McKinney recommended contacting the NMDOT to request the installation of additional lights over the overpass.

Councilor Landavazo made the motion to proceed with the sale of City owned land at the corner of Montoya Boulevard and Miyamura Overpass. Seconded by Councilor Kumar. Roll call: Councilors Landavazo, Kumar, Palochak, Garcia, and Mayor McKinney all voted yes.

8. Approval of Water Service Agreement with Be Greene, LLC – George Kozeliski, City Attorney

Mr. Kozeliski said the proposed water service agreement would replace an agreement executed in 1967 between the City and the previous owners, Howard and Sibyl Wilson and Ann Marie Rutherford. The agreement with the new property owners, Be Greene, LLC provides detailed conditions for the City's obligations to provide water in contrast to the previous agreement. Mr. Kozeliski provided an overview of the proposed agreement, which is identical to a water service agreement with Be Greene, LLC that was approved by the Mayor and Councilors over 1½ year ago. The subject agreement is for additional acreage of land purchased by Be Greene, LLC.

Discussion followed concerning the amount of water to be supplied to Be Greene, LLC under the proposed agreement.

Councilor Palochak made the motion to approve the Water Service Agreement with Be Greene, LLC. Seconded by Councilor Landavazo. Roll call: Councilors Palochak, Landavazo, Kumar, Garcia, and Mayor McKinney all voted yes.

9. Approval of Agreement with New Mexico State University (NMSU) and Professors Gavin and Goss to Continue Work on the Fox Run Golf Course – George Kozeliski, City Attorney

Mr. Kozeliski said the current agreement with NMSU and Professors Gavin and Goss will expire at the end of the month. The proposed agreement is for two years under the same terms with the professors. The amounts in the agreement are the same except for the payment to turf-grass undergraduate students, which will be reduced from \$17 to \$20 per hour to \$12 per hour and not to exceed 55 hours per week. Also, payments to

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undergraduate NMSU PGA program members will remain at \$17 per hour based upon a 40 hour work week. Any golf lessons by NMSU PGA program members will be at their discretion with the City receiving 10% of any income generated.

Councilor Kumar made the motion to approve the Agreement with New Mexico State University and Professors Gavin and Goss to continue work on the Fox Run Golf Course. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Landavazo, Palochak, and Mayor McKinney all voted yes.

10. Authority to Proceed with Legal Action to Foreclose the Lien on the Property Owned by Frances C. Romero at 403 East Hill – George Kozeliski, City Attorney

Mr. Kozeliski said the subject property was condemned by the City Council and has been demolished. The City filed a lien against the subject property in the amount of \$23,698.13 for the cost of the demolition of the structure and removal of the debris. Ahead of the City's lien is a State tax lien that was filed for over \$8,000 for back property taxes. Based on information provided by County officials, it was discovered that the property went out for sale by the State last year; however, there were no bids received for the property. As a result, the State will include the property in next year's property sale. If the City proceeds with the foreclosure action, the State will be entitled to the first monies collected from the process. Although the City will not recover all that it is owed, Mr. Kozeliski recommended proceeding with legal action to foreclose the lien in order to remove the matter from the City's books and to eventually convey the property to a private owner to develop.

Councilor Landavazo made the motion to proceed with legal action to foreclose the lien on the property owned by Frances C. Romero at 403 East Hill. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Kumar, and Mayor McKinney all voted yes. Councilor Garcia abstained. Motion carried.

11. Public Notice Given Pursuant to Section 10-16-7 of the Governmental Conduct Act Regarding the Ground Lease with Yogash Kumar for Use of the Parking Lot at 4<sup>th</sup> Street and Aztec Avenue – George Kozeliski, City Attorney

Mr. Kozeliski said the Governmental Conduct Act requires public notice of contracts with public officials or public employees. Councilor Kumar, in his private capacity, purchased the property located at 4<sup>th</sup> Street and Aztec Avenue from the U.S. Bankruptcy Court sale, in which the City previously leased from the Diocese of Gallup for use as a parking lot. As a result, the City entered into a lease with Mr. Kumar under

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the same terms and conditions as the City had with the Diocese of Gallup. For the record, in accordance with Section 10-16-7 of the New Mexico Governmental Conduct Act, public notice is hereby given regarding the Ground Lease entered into by and between Yogash Kumar and the City of Gallup for the use of the parking lot at 4<sup>th</sup> Street and Aztec Avenue.

Presented to the Mayor and Councilors was the following Presentation and Information item:

1. 16<sup>th</sup> Annual NCI New Year's Eve Sobriety Gourd Dance and Pow Wow – Dr. Kevin Foley, Na'Nizhoozhi Center, Inc.

Dr. Foley provided an overview of the alcohol and drug free event which will take place at Miyamura High School Gym on New Year's Eve beginning at 12:00 p.m.

### **Comments by Public on Non-Agenda Items**

Mike Marksberry of KBK Construction addressed the Mayor and Councilors regarding allegations that his company failed to meet the scheduled end date of their contract with the City of Gallup for Reach 13 of the Navajo Gallup Water Supply Project. He asked the Mayor and Councilors to reconsider the City's position of re-awarding the completion of the project to another contractor. Mr. Kozeliski said he is familiar with the situation and that the City's has no comment on the matter.

### **Comments by Mayor and City Councilors**

Councilor Palochak thanked Stan Henderson, Public Works Director, and his staff for their work on installing speed humps in the Stagecoach area. Councilor Palochak also thanked Jon DeYoung, Assistant to the City Manager, and Richard Matzke, Director, Gallup Electric Department, for resolving the issues with the lighting on the Munoz Overpass. Councilor Palochak wished everyone a Merry Christmas and a happy holiday season. She said the season is about giving and encouraged everyone to give of their time, talents and treasures to others.

Councilor Landavazo said every year the City allocates a large amount of lodger's tax funds to organizations to host events. Councilor Landavazo said he spoke with Sammy Chioda, organizer of the Touch Down Football League (TDFL) 6<sup>th</sup> Annual Four Corners Invitational, and asked him for a report of the event since the City's contribution of lodger's tax funds for marketing the event was rather significant. Councilor Landavazo provided an overview of Mr. Chioda's report which highlights the contributions made by the City, the 28 teams that participated in the event, the meet and greet event which was held prior to the tournament, the family members of the teams that traveled to Gallup and stayed for two to three nights during the tournament, the feedback from local

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businesses regarding increased sales during the weekend of the event, the work with representatives of the National Football League (NFL) to bring Roy Gerela to appear at the event, the arrangements that were made with the NFL through USA Football to fund helmet safety testing as they work towards 100% compliance for coaches certification and concussion safety, and the fact that 60% of the relational games between Gallup teams and Albuquerque teams were played in Gallup based on an inspection of Gallup playing facilities by Albuquerque officials resulting in a favorable economic impact for Gallup. In his report, Mr. Chioda thanked the Gallup Fire Department for being on standby for the event and the City's crews for their work in preparing the fields. Mr. Chioda's report also stated that during the past 20 years, TDFL has served over 10,000 youth through their program. Councilor Landavazo estimated that every lodger's tax dollar invested, the return would be anywhere from four to six dollars to the community. Councilor Landavazo commended Mr. Strain and his staff for the success of the City's Clean and Lien Program. Councilor Landavazo also congratulated Eric Babcock, Fire Chief, for his second employment anniversary with the City. Councilor Landavazo commended Chief Babcock for his leadership and service to the community. Councilor Landavazo encouraged everyone to continue to believe in Gallup.

Councilor Garcia said Gallup is growing and becoming better. She said as it becomes bigger and better, she is thankful the City acknowledges its citizens by naming streets after them. Councilor Garcia welcomed Smokey's, Wise Pies and Panda Express as the new businesses that recently opened in her district. Councilor Garcia commented on the recent successful events in Gallup, including the Red Rock Balloon Rally, the Annual Christmas Parade, the Crafts Show at the Larry Brian Mitchell Recreation Center and the Festival of Trees.

Mayor McKinney said he attended the ribbon cutting ceremony for Panda Express as the new restaurant experienced the largest gross sales day on an opening day among their 1,500 locations.

### **Comments by City Manager**

Ms. Ustick said there will be a Special Council Meeting next Tuesday, December 15, 2015 at 6:00 P.M. She also said the December 22, 2015 Regular Council Meeting will be canceled. Ms. Ustick said City staff will continue to work on the Metropolitan Redevelopment Area Plan and the Arts and Cultural District Plans. A Work Session will be conducted at 5:00 P.M. on Tuesday, January 12, 2016, regarding the 10 Year Financial Plan for the Electric Department. A Work Session will also be conducted at 4:30 P.M. on Tuesday, January 26, 2016, concerning the Growth Management Master Plan.

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There being no further business, Councilor Palochak made the motion to adjourn the meeting. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Landavazo, and Mayor McKinney all voted yes.

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Jackie McKinney, Mayor

ATTEST:

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Alfred Abeita II, City Clerk

Minutes of the Special Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at City Hall, 110 West Aztec Avenue, at 6:00 p.m. on Tuesday, December 15, 2015.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

|               |  |
|---------------|--|
| Mayor:        | Jackie McKinney  |
| Councilors:   | Linda Garcia<br>Allan Landavazo<br>Yogash Kumar<br>Fran Palochak |
| Also present: | Maryann Ustick, City Manager<br>George Kozeliski, City Attorney  |

Due to issues related to the City's procurement process, Ms. Ustick recommended removing Item #5, "Contract Award for Fox Run Golf Course Irrigation Project, Formal Bid No. 1515" from the agenda. She said the item will be presented to the Mayor and Councilors for approval at the next regular meeting.

Councilor Kumar made the motion to remove Item #5, "Contract Award for Fox Run Golf Course Irrigation Project, Formal Bid No. 1515" from the agenda. Seconded by Councilor Landavazo. Roll call: Councilors Kumar, Landavazo, Garcia, Palochak, and Mayor McKinney all voted yes.

Ms. Ustick also recommended the presentation of the Metropolitan Redevelopment Plan under Item #3 prior to the presentation of the Arts and Cultural District Plan under Item #2.

Councilor Palochak made the motion to move Item #3 to Item #2 and to move Item #2 to Item #3. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Landavazo, and Mayor McKinney all voted yes.

Presented to the Mayor and Councilors were the following Discussion/Action Topics:

1. Presentation by the Junior Public Safety Academy – Officer Kenneth Langley, University of New Mexico-Gallup

On behalf of the Junior Public Safety Academy, Officer Langley presented a plaque to the Mayor and Councilors expressing their appreciation to the City of Gallup for its assistance with the 2015 Academy.

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2. Resolution No. R2015-36; A Resolution Making Certain Findings and Determinations Pursuant to the New Mexico Metropolitan Redevelopment Code and Approving the Gallup Downtown Metropolitan Redevelopment Area Plan – Maryann Ustick, City Manager

Ms. Ustick presented the proposed Resolution and said there have been a few technical corrections made to the Metropolitan Redevelopment Area (MRA) Plan since the last special meeting. She also said all of the property owners in the proposed MRA have been notified in accordance with State law.

Charlie Deans, Communities By Design, provided an overview of the proposed MRA Plan, including the implementation tools that are provided to municipalities under the New Mexico Metropolitan Redevelopment Code, Tax Increment Financing (TIF) Districts, the planning stages and processes involved for creating the MRA plan, the boundary of the MRA, the Opportunity Sites Study Map of the MRA, the following 5 projects (out of 27) in the Gallup Downtown Conceptual Plan: a new library at the present Children's Library, transformation of a portion of Coal Avenue into an event's street, four blocks of alleyway improvements, improvements to a fenced-off area on West Aztec where an underground arroyo is located, and a pedestrian underpass at the railroad crossing on Second Street, and a table consisting of the implementation timeline, responsible entities and funding sources for the projects.

Discussion followed concerning the proper boundary of the MRA and the possible implementation of a TIF District for the MRA. Ms. Ustick said additional financial information will be prepared for the Mayor and Councilors prior to considering the implementation of a TIF District, which will take place at a later time.

Mayor McKinney asked if there was anyone in the audience who would like to provide input on the proposed MRA Plan. There was none.

Councilor Landavazo made the motion to approve Resolution No. R2015-36 with the correct map of the Metropolitan Redevelopment Area. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Garcia, Kumar, and Mayor McKinney all voted yes.

3. Resolution No. R2015-35; A Resolution Creating an Arts and Cultural District (ACD) Pursuant to the New Mexico State Enabling Legislation; Approving the Gallup Arts and Cultural District Plan and Setting District Boundaries – Maryann Ustick, City Manager

Ms. Ustick presented the proposed Resolution and said there were a few technical

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corrections made to the Arts and Cultural Plan since the last special meeting.

Mr. Deans provided an overview of the proposed ACD Plan, including the provisions of the State Historic Preservation Tax Credit Program and other benefits for implementing an ACD, the proposed boundary of the ACD, the projects included in the Gallup ACD Conceptual Redevelopment Plan, and the following recommendations for the ACD: artist programming, tourist programming, and organizational programming. Mr. Dean also provided a table consisting of the implementation timeline, responsible entities and funding sources for the projects included in the ACD Plan.

Discussion followed concerning the implementation process since the time when Gallup's Arts and Cultural District was formally designated by the State.

Mayor McKinney asked if there was anyone in the audience who would like to provide input on the proposed ACD Plan. There was none.

Councilor Palochak made the motion to approve Resolution No. R2015-35. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Landavazo, and Mayor McKinney all voted yes.

4. Review and Approve an Increase in the Metro Dispatch Authority's Budget in the Amount of \$15,000 from Metro Dispatch Authority's Cash Balance – Georgene Dimas, McKinley County Metropolitan Dispatch Authority Director and Sara Keeler, McKinley County Finance Director

Ms. Dimas said the budget adjustment is needed to cover the costs for changing emergency medical dispatch providers for training and services since it has been recently discovered that the services provided by the current vendor is severely inadequate. The total cost for the implementation, training and equipment needed for the change in providers is \$30,072; however, the costs for the training and equipment will come from budgeted funds under a \$25,000 State E-911 Grant. The Metro Dispatch Authority Board and the McKinley County Board of Commissioners previously approved the budget adjustment.

Discussion followed concerning the amounts to be paid under Metro Dispatch Authority's current budget and use of the additional \$15,000 for the cost of changing providers.

Mr. Kozeliski said the Joint Powers Agreement between the City and County requires the approval of both governing bodies when there is an increase to the budget for the Metro Dispatch Authority.

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Councilor Palochak made the motion to approve the increase in the Metro Dispatch Authority's budget in the amount of \$15,000 from Metro Dispatch Authority's cash balance. Seconded by Councilor Kumar. Roll call: Councilors Palochak, Kumar, Garcia, Landavazo, and Mayor McKinney all voted yes.

### **Comments by Public on Non-Agenda Items**

None.

### **Comments by Mayor and City Councilors**

Councilor Garcia wished everyone a Merry Christmas and a Blessed New Year.

Councilor Kumar said the City's Employee Recognition and Christmas Gala was enjoyable. He thanked City staff for their work and wished everyone Happy Holidays.

Councilor Landavazo said Governor Susana Martinez was in Gallup last week for a press conference to raise awareness on the increased DWI enforcement efforts throughout the state. Councilor Landavazo agreed with Councilor Kumar regarding his comments on the City's Employee Recognition and Christmas Gala. Councilor Landavazo wished everyone a Merry Christmas and a safe holiday season.

Councilor Palochak commended the Gallup Fire Department, Gallup Police Department and Metro Dispatch Authority for their work in handling the calls for assistance during the winter storm yesterday. She also commended City staff and the Rehoboth Choir for an enjoyable evening during the City's Employee Recognition and Christmas Gala. Councilor Palochak wished everyone a Merry Christmas and encouraged everyone to give of their time and talents to others.

Councilor Landavazo said he received a phone call concerning information transmitted over the scanner about unidentified individual(s), with the assistance of the Police Department, handing out coats to people out on the streets. Councilor Landavazo commended those who assisted with this effort.

Mayor McKinney said he was unable to attend the City's Employee Recognition and Christmas Gala because he was out-of-town to attend the funeral of a family member. Based on his experience in the private sector, Mayor McKinney said it was great to have a gathering to recognize employees and to thank them for what they do. The next Council Meeting will be on January 12, 2016 since there will not be a Council Meeting during the week of Christmas. Mayor McKinney wished everyone a Merry Christmas and a safe holiday season.

**Comments by City Manager**

Ms. Ustick provided information from the Gallup Police Department concerning the treacherous driving conditions as a result of yesterday's winter storm. There were 28 traffic accidents and no serious injuries were reported. The storm occurred approximately from 2:30 p.m. to about 9:00 p.m. and the peak of the storm occurred around 5:00 p.m. when people were driving home from work. Although the City's Street Department crews were out in full force to tend to the City's roadways, it was difficult for crews to reach certain areas on an immediate basis due to the high traffic volume. Ms. Ustick thanked Stan Henderson, Public Works Director, and his crews for their work in addressing the icy streets. She also commended the Gallup Police Department and Gallup Fire Department for their work in handling situations during the storm. Ms. Ustick thanked all of the City's employees for their work and wished everyone a Merry Christmas and a Happy New Year.

There being no further business, Councilor Landavazo made the motion to adjourn the meeting. Seconded by Councilor Garcia. Roll call: Councilors Landavazo, Garcia, Kumar, Palochak, and Mayor McKinney all voted yes.

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Jackie McKinney, Mayor

ATTEST:

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Alfred Abeita II, City Clerk

## **Discussion/Action Topic 1**

Resolution No. R2016-2;  
Acceptance of Legislative Appropriation 15-0942 for the  
Allison Road Bridge Construction Project

Stan Henderson, Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: 12 January 2016

**SUBJECT:** LEGISLATIVE APPROPRIATION 15-0942 ACCEPTANCE FOR ALLISON ROAD BRIDGE CONSTRUCTION PROJECT  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 30 December 2015  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** Attached as enclosure (1) for the City Council's consideration and approval is the funding agreement for the 2015 State appropriation in the amount of \$2,250,000 for the subject project. In addition, associated resolution – accepting the funding by the City Council on behalf of the City and designating the City's representative(s) for matters concerning this funding agreement - is also attached as enclosure (2) for the City Council's consideration and approval.

**Fiscal Impact:**

Reviewed By: Patty Holland  
Finance Department

As a legislative grant, there is no matching amount required from the City.

**Enclosures:** (1) NMDOT Ltr of 27 Oct 15 w/ Funding Agreement CN #C6150942  
(2) Resolution #2016- 2

**Legal Review**

Approved As To Form: [Signature]  
City Attorney

**Recommendation:** Approve the attached funding agreement and resolution for acceptance of the State fiscal appropriation.

Approved For Submittal By:  
Stanley Henderson 12/31/15  
Department Director

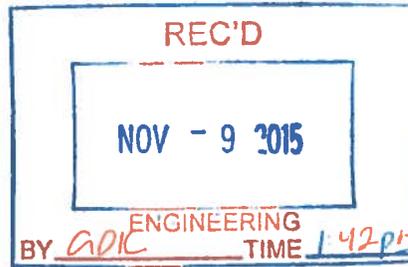
[Signature] Acting CM  
City Manager

| CITY CLERK'S USE ONLY<br>COUNCIL ACTION TAKEN |       |               |       |
|---|-------|---------------|-------|
| Resolution No.:                               | _____ | Continued To: | _____ |
| Ordinance No.:                                | _____ | Referred To:  | _____ |
| Approved:                                     | _____ | Denied:       | _____ |
| Other:  | _____ | File No.:     | _____ |



October 27, 2015

Mr. Stan Henderson  
Public Works Director  
City of Gallup  
P.O. Box 1270  
Gallup, New Mexico 87305



**RE: Agreement for CN C6150942, Appropriation ID 15-0942**

Dear Mr. Henderson:

Enclosed for your coordination of signatures are three originals of the Severance Tax Agreement. **Please return them to the District Capital Coordinator.** DO NOT fill in the date on the first page of the enclosed Agreements. An original will be mailed to you at the time they are fully executed. The Agreement contains the standard terms and conditions required by DFA to ensure proper accounting of capital funds to include the reporting requirements listed in Article VIII. The City should review the terms and conditions listed in the Agreement carefully to ensure compliance.

The Department of Finance and Administration is working to improve the management of capital appropriations granted to and administered by local entities. As part of this process, **DFA is requiring monthly electronic reporting using the Capital Project Monitoring System (CPMS).** The City can access CPMS at the following web site <http://cpms.dfa.state.nm.us/Login.aspx>. The City will need to log in as a local entity and report the status on all of the City's open General Fund and Severance Tax projects. The City of Gallup should contact Jimmy Rodriguez with DFA, State Budget Division Capital Outlay Bureau at (505) 827-3884 or e-mail [JimmyN.Rodriguez@state.nm.us](mailto:JimmyN.Rodriguez@state.nm.us) to obtain a user id and password.

If you have any questions concerning the Agreement or if I can be of further assistance, please contact me at 505-476-3784.

Sincerely,

Brian Sandoval  
T/LPA /Capital Outlay Program Manager  
Project Oversight Division

Concur:

District Capital Coordinator

**Susana Martinez**  
Governor

**Tom Church**  
Cabinet Secretary

**Commissioners**

**Ronald Schmeits**  
Chairman  
District 4

**Dr. Kenneth White**  
Secretary  
District 1

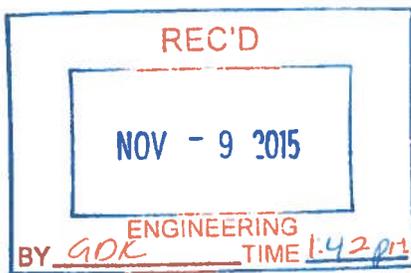
**David Sepich**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Butch Mathews**  
Commissioner  
District 5

**Jackson Gibson**  
Commissioner  
District 6

Enclosure (1)



Contract Number: \_\_\_\_\_

Vendor Number: 0000054334

Control Number: C6150942

**STATE OF NEW MEXICO  
DEPARTMENT OF TRANSPORTATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Department of Transportation, P.O. Box 1149, Room 126, Santa Fe, New Mexico 87504-1149, hereinafter called the "Department" and City of Gallup, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2015, SB1, Chapter 3, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**DFA Appropriation ID 15-0942 NMDOT Control Number C6150942 \$2,250,000 APPROPRIATION  
REVERSION DATE: 6/30/2019**

Laws of 2015 SB1, Chapter 3, Section 33, Sub Section 47, Two Million Two Hundred Fifty Thousand Dollars and No Cents (\$2,250,000) to acquire rights of way and to plan, design and construct a bridge across the Puerco river on Allison road in Gallup in McKinley county; and notwithstanding the provisions of Subsection A of Section 13-1-119.1 NMSA 1978, the department may use a designand build delivery system for the project funded through this appropriation.

The Grantee's total reimbursements shall not exceed the appropriation amount Two Million Two Hundred Fifty Thousand Dollars and No Cents \$2,250,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, , \$0.00, which equals Two Million Two Hundred Fifty Thousand Dollars and No Cents \$2,250,000 (the "Adjusted Appropriation Amount").

<sup>1</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." "Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Gallup  
Name: Stan Henderson  
Title: Public Works Director  
Address: P.O. Box 1270, Gallup, New Mexico 87305  
Email: pubwrks@ci.gallup.nm.us  
Telephone: 505-863-1290

Department: Department of Transportation District 6 Office  
Name: Joann Garcia  
Title: Local Government Road Fund Coordinator  
Address: P.O. Box 2160, Milan, NM 87021  
Email: Joann.garcia2@state.nm.us  
Telephone: 505-285-3288  
FAX: 505-285-3251

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on 6/30/2019 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

##### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of

such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

**ARTICLE VIII. REPORTS**

**A. Paper Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1.

The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

#### **B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

#### **C. Paperless Reporting**

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report periodic and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

#### **D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

### **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

#### **B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
  - (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a **resolution**, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

**ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

## **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

## **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

## **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

## **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Gallup may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Gallup's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Gallup or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Gallup or the Department."

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Gallup may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Gallup only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

**XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

- A. Throughout the term of this Agreement, Grantee shall:
1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
  2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
  3. timely submit all required financial reports to its budgetary oversight agency (if any); and
  4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

- B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
  2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
  3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
  4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of

Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Cabinet Secretary or Designee

\_\_\_\_\_  
Date

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

Cynthia A Christ  
By: Cynthia Christ

Its: Assistant General Counsel

10-23-15  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
PAPER PERIODIC/FINAL REPORT  
EXHIBIT 1**

PERIODIC REPORT       FINAL REPORT

Grantee: \_\_\_\_\_

Project Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

1. Please provide a detailed status of project referenced above.

**A. Third Party Obligations**

Purchase Order or Contract # \_\_\_\_\_

Name of Contractor or Vendor: \_\_\_\_\_

Amount of Third Party Obligation: \_\_\_\_\_

Date Executed: \_\_\_\_\_

Termination Date: \_\_\_\_\_

**B. Project Phase**

Bonds Sold  Plan/Design  Bid Documents  Construction   
(provide anticipated date of commencement and completion for each phase)

2. Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

Total Amount of all Notices of Obligation to Reimburse: \_\_\_\_\_

Total Grant Amount Expended by Grantee to Date: \_\_\_\_\_

Grant Balance as of this Date: \_\_\_\_\_

Amount of Other Unexpended Funding Sources: \_\_\_\_\_

**PERIODIC REPORT**

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

**FINAL REPORT**

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

\_\_\_\_\_  
Grantee Representative/Title

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 2**

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_  
 B. Address: \_\_\_\_\_  
Complete Mailing, including Suite, if applicable  
 \_\_\_\_\_  
City State Zip  
 C. Phone No: \_\_\_\_\_  
 D. Grant No: \_\_\_\_\_  
 E. Project Title: \_\_\_\_\_  
 F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Grant Amount: \_\_\_\_\_  
 B. AIPP Amount (If Applicable) \_\_\_\_\_  
 C. Funds Requested to Date: \_\_\_\_\_  
 D. Amount Requested this Payment: \_\_\_\_\_  
 E. Grant Balance:                     \$0.00  
 F.  GF     GOB     STB (attach wire if 1st draw)  
 G. Payment Request No. \_\_\_\_\_

**III. Fiscal Year Expenditure Period Ending:**  
(check one)

- (Jan-Jun)        Fiscal  
 (Jul-Dec)       Year

**IV. Certification:** Under penalty of law, I hereby certify to the best of my know ledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
 Printed Name  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Printed Name  
 Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED  
 before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_

SWORN TO AND SUBSCRIBED  
 before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

Notary Public \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

**(Department Use Only)**

Vendor Code: \_\_\_\_\_  
 Loc No.: \_\_\_\_\_

Fund No.: \_\_\_\_\_

|  |      |
|--|------|
|  |      |
| Division Fiscal Officer  | Date |
| I certify that the Grantee financial and vendor file information agree with the above submitted information. |      |

|   |      |
|---|------|
|   |      |
| Division Project Manager  | Date |
| I certify that the Grantee records and related appropriation laws agree with the above submitted information. |      |

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 3**

**DATE:** \_\_\_\_\_

**TO:**           **Grantee Representative:** \_\_\_\_\_

**FROM:**       **Department Representative:** \_\_\_\_\_

**SUBJECT:**    **Notice of Obligation to Reimburse Grantee**

**Project Number:** \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number C6150942 entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Third Party Obligation (includes purchase orders and contract) #: \_\_\_\_\_  
Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_  
Termination Date: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

The Amount of this Notice of Obligation to Reimburse: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Reimburse as of this Date: \_\_\_\_\_

Department Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment A**

### **The City of Gallup shall agree to comply with the following Provisions:**

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a **written resolution** of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

### **The City of Gallup shall agree to comply with the following Lighting and Signal Provisions as applicable:**

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.

6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

RESOLUTION #R2016- 2

A RESOLUTION TO THE NEW MEXICO DEPARTMENT OF TRANSPORTATION  
FOR THE CITY OF GALLUP'S ACCEPTANCE OF STATE APPROPRIATION ID #15-0942

WHEREAS, the City of Gallup, NM was appropriated \$2,250,000 for its right-of-way acquisition, planning, design, and construction of a new bridge on Allison Road across the Puerco River by the 2015 State Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NM THAT:

The City Of Gallup, NM desires the State appropriation, and that by approving this Resolution, its City Council is affirming that desire and accepting the aforementioned funding.

Designate the Mayor of Gallup as the official representative of the City for signing the associated funding agreement. And

Designate the Public Works Director as the official representative for signing Requests For Payment and other matters related to the associated funding agreement.

PASSED AND ADOPTED by the Gallup City Council this the 12<sup>th</sup> day of January 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

## **Discussion/Action Topic 2**

Resolution No. R2016-3;  
Acceptance of Legislative Appropriation 15-1034 for the  
Allison Road Bridge Construction Project

Stan Henderson, Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: 12 January 2016

**SUBJECT:** LEGISLATIVE APPROPRIATION 15-1034 ACCEPTANCE FOR ALLISON ROAD BRIDGE CONSTRUCTION PROJECT  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 30 December 2015  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** Attached as enclosure (1) for the City Council's consideration and approval is the funding agreement for the 2015 State appropriation in the amount of \$1,600,000 for the subject project. In addition, associated resolution – accepting the funding by the City Council on behalf of the City and designating the City's representative(s) for matters concerning this funding agreement - is also attached as enclosure (2) for the City Council's consideration and approval.

**Fiscal Impact:**

Reviewed By:

*Patty Holland*  
Finance Department

As a legislative grant, there is no matching amount required from the City.

**Enclosures:** (1) NMDOT Ltr of 9 Dec 15 w/ Funding Agreement CN #C6151034  
(2) Resolution #2016-3

**Legal Review**

Approved As To Form:

*[Signature]*  
City Attorney

**Recommendation:** Approve the attached funding agreement and resolution for acceptance of the State fiscal appropriation.

Approved For Submittal By:

*Stanley Henderson* 12/30/15  
Department Director

*Jim Pollock* Acting CM  
City Manager

CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN

|                 |       |               |       |
|-----------------|-------|---------------|-------|
| Resolution No.: | _____ | Continued To: | _____ |
| Ordinance No.:  | _____ | Referred To:  | _____ |
| Approved:       | _____ | Denied:       | _____ |
| Other:          | _____ | File No.:     | _____ |



December 9, 2015

Mr. Stan Henderson  
Public Works Director  
City of Gallup  
P.O. Box 1270  
Gallup, New Mexico 87305

**RE: Agreement for CN C6151034, Appropriation ID 15-1034**

Dear Mr. Henderson:

Enclosed for your coordination of signatures are three originals of the Severance Tax Agreement. **Please return them to the District Capital Coordinator.** DO NOT fill in the date on the first page of the enclosed Agreements. An original will be mailed to you at the time they are fully executed. The Agreement contains the standard terms and conditions required by DFA to ensure proper accounting of capital funds to include the reporting requirements listed in Article VIII. The City should review the terms and conditions listed in the Agreement carefully to ensure compliance.

The Department of Finance and Administration is working to improve the management of capital appropriations granted to and administered by local entities. As part of this process, **DFA is requiring monthly electronic reporting using the Capital Project Monitoring System (CPMS).** The City can access CPMS at the following web site <http://cpms.dfa.state.nm.us/Login.aspx>. The City will need to log in as a local entity and report the status on all of the City's open General Fund and Severance Tax projects. The City of Gallup should contact Jimmy Rodriguez with DFA, State Budget Division Capital Outlay Bureau at (505) 827-3884 or e-mail [JimmyN.Rodriguez@state.nm.us](mailto:JimmyN.Rodriguez@state.nm.us) to obtain a user id and password.

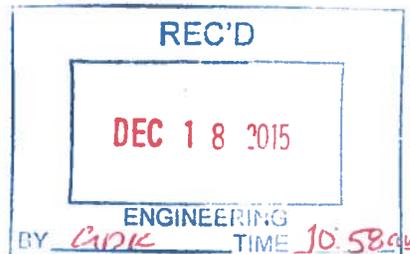
If you have any questions concerning the Agreement or if I can be of further assistance, please contact me at 505-476-3784.

Sincerely,

Sean Sandoval  
T/LPA /Capital Outlay Program Manager  
Project Oversight Division

Concur:

District Capital Coordinator



**Susana Martinez**  
Governor

**Tom Church**  
Cabinet Secretary

**Commissioners**

**Ronald Schmeits**  
Chairman  
District 4

**Dr. Kenneth White**  
Secretary  
District 1

**David Sepich**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Butch Mathews**  
Commissioner  
District 5

**Jackson Gibson**  
Commissioner  
District 6

Contract Number: \_\_\_\_\_  
Vendor Number: 000054334  
Control Number: C6151034

**STATE OF NEW MEXICO  
DEPARTMENT OF TRANSPORTATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Department of Transportation, P.O. Box 1149, Room 126, Santa Fe, New Mexico 87504-1149, hereinafter called the "Department" and City of Gallup, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2015, SB1, Chapter 3, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID 15-1034 NMDOT Control Number C6151034 \$1,600,000 APPROPRIATION  
REVERSION DATE: 6/30/2019

Laws of 2015 SB1, Chapter 3, Section 50, One Million Six Hundred Thousand Dollars and No Cents (\$1,600,000) to acquire rights of way and to plan, design, and construct a bridge across the Puerco river on Allison road in Gallup in McKinley county; and notwithstanding the provisions of Subsection A of Section 13-1-119.1 NMSA 1978,. the department may use a design and build delivery system for the project funded through this appropriation.

The Grantee's total reimbursements shall not exceed the appropriation amount One Million Six Hundred Thousand Dollars and No Cents \$1,600,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, , \$0.00, which equals One Million Six Hundred Thousand Dollars and No Cents \$1,600,000 (the "Adjusted Appropriation Amount").

<sup>1</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars.(\$100,000)." Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." "Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

---

<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Gallup  
Name: Stan Henderson  
Title: Public Works Director  
Address: P.O. Box 1270, Gallup, New Mexico 87305  
Email: pubwrks@ci.gallup.nm.us  
Telephone: 505-863-1290

Department: Department of Transportation District 6 Office  
Name: Joann Garcia  
Title: Local Government Road Fund Coordinator  
Address: P.O. Box 2160, Milan, NM 87021  
Email: Joann.garcia2@state.nm.us  
Telephone: 505-285-3288  
FAX: 505-285-3251

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on 6/30/2019 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State

of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

**B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department’s decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

**C. Limitation on Department’s Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department’s sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department’s sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Paper Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

### **B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever first occurs.

### **C. Paperless Reporting**

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report periodic and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever first occurs.

### **D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable

period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

#### **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

#### **B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
  - (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or

employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all sub awards, including subcontracts, loans and cooperative agreements. All sub recipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Gallup may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Gallup’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Gallup or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Gallup or the Department.”

#### **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Gallup may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Gallup only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

#### **XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

- A. Throughout the term of this Agreement, Grantee shall:
1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
  2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
  3. timely submit all required financial reports to its budgetary oversight agency (if any); and

4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

#### **ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: \_\_\_\_\_  
(Type or Print Name)



Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Cabinet Secretary or Designee

\_\_\_\_\_  
Date

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

Cynthia A Christ  
By: Cynthia Christ

Its: Assistant General Counsel

12-9-15  
Date

STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
PAPER PERIODIC/FINAL REPORT  
EXHIBIT 1

PERIODIC REPORT     FINAL REPORT

Grantee: \_\_\_\_\_

Project Number: \_\_\_\_\_      Reporting Period: \_\_\_\_\_

1. Please provide a detailed status of project referenced above.

*A. Third Party Obligations*

Purchase Order or Contract # \_\_\_\_\_

Name of Contractor or Vendor: \_\_\_\_\_

Amount of Third Party Obligation: \_\_\_\_\_

Date Executed: \_\_\_\_\_

Termination Date: \_\_\_\_\_

*B. Project Phase*

Bonds Sold  Plan/Design  Bid Documents  Construction   
(provide anticipated date of commencement and completion for each phase)

2. Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

Total Amount of all Notices of Obligation to Reimburse: \_\_\_\_\_

Total Grant Amount Expended by Grantee to Date: \_\_\_\_\_

Grant Balance as of this Date: \_\_\_\_\_

Amount of Other Unexpended Funding Sources: \_\_\_\_\_

PERIODIC REPORT

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

FINAL REPORT

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

\_\_\_\_\_  
Grantee Representative/Title

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 2**

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_
- B. Address: \_\_\_\_\_  
Complete Mailing, including Suite, if applicable
- City                      State                      Zip
- C. Phone No: \_\_\_\_\_
- D. Grant No: \_\_\_\_\_
- E. Project Title: \_\_\_\_\_
- F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Grant Amount: \_\_\_\_\_
- B. AIPP Amount (If Applicable) \_\_\_\_\_
- C. Funds Requested to Date: \_\_\_\_\_
- D. Amount Requested this Payment: \_\_\_\_\_
- E. Grant Balance:                     \$0.00
- F.  GF     GOB     STB (attach wire if 1st draw)
- G. Payment Request No. \_\_\_\_\_

**III. Fiscal Year Expenditure Period Ending:**  
(check one)

- (Jan-Jun)                          Fiscal
- (Jul-Dec)                          Year

**IV. Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
Printed Name  
Date: \_\_\_\_\_

\_\_\_\_\_  
Printed Name  
Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED  
before me on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

SWORN TO AND SUBSCRIBED  
before me on this \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_  
My Commission expires \_\_\_\_\_

Notary Public \_\_\_\_\_  
My Commission expires \_\_\_\_\_

**(Department Use Only)**

Vendor Code: \_\_\_\_\_  
Loc No.: \_\_\_\_\_

Fund No.: \_\_\_\_\_

|  |      |
|--|------|
| Division Fiscal Officer  | Date |
| I certify that the Grantee financial and vendor file information agree with the above submitted information. |      |

|   |      |
|---|------|
| Division Project Manager  | Date |
| I certify that the Grantee records and related appropriation laws agree with the above submitted information. |      |

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 3**

DATE: \_\_\_\_\_

TO:           Grantee Representative: \_\_\_\_\_

FROM:        Department Representative: \_\_\_\_\_

SUBJECT:     Notice of Obligation to Reimburse Grantee

Project Number: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number C6151034 entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Third Party Obligation (includes purchase orders and contract) #: \_\_\_\_\_  
Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_  
Termination Date: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

The Amount of this Notice of Obligation to Reimburse: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Reimburse as of this Date: \_\_\_\_\_

Department Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment A**

### **The City of Gallup shall agree to comply with the following Provisions:**

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

### **The City of Gallup shall agree to comply with the following Lighting and Signal Provisions as applicable:**

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.

6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

RESOLUTION #R2016- 3

A RESOLUTION TO THE NEW MEXICO DEPARTMENT OF TRANSPORTATION  
FOR THE CITY OF GALLUP'S ACCEPTANCE OF STATE APPROPRIATION ID #15-1034

WHEREAS, the City of Gallup, NM was appropriated \$1,600,000 for its right-of-way acquisition, planning, design, and construction of a new bridge on Allison Road across the Puerco River by the 2015 State Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NM THAT:

The City Of Gallup, NM desires the State appropriation, and that by approving this Resolution, its City Council is affirming that desire and accepting the aforementioned funding.

Designate the Mayor of Gallup as the official representative of the City for signing the associated funding agreement. And

Designate the Public Works Director as the official representative for signing Requests For Payment and other matters related to the associated funding agreement.

PASSED AND ADOPTED by the Gallup City Council this the 12<sup>th</sup> day of January 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

### **Discussion/Action Topic 3**

Resolution No. R2016-4;  
Acceptance of Legislative Appropriation 15-1029 for the  
Allison Road Bridge Construction Project

Stan Henderson, Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: 12 January 2016

**SUBJECT:** LEGISLATIVE APPROPRIATION 15-1029 ACCEPTANCE FOR ALLISON ROAD BRIDGE CONSTRUCTION PROJECT  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 30 December 2015  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** Attached as enclosure (1) for the City Council's consideration and approval is the funding agreement for the 2015 State appropriation in the amount of \$650,000 for the subject project. In addition, associated resolution – accepting the funding by the City Council on behalf of the City and designating the City's representative(s) for matters concerning this funding agreement - is also attached as enclosure (2) for the City Council's consideration and approval.

**Fiscal Impact:**

Reviewed By: \_\_\_\_\_

*Patricia Holland*  
Finance Department

As a legislative grant, there is no matching amount required from the City.

**Enclosures:** (1) NMDOT Ltr of 9 Dec 15 w/ Funding Agreement CN #C6151029  
(2) Resolution #2016- 4

**Legal Review**

Approved As To Form: \_\_\_\_\_

*[Signature]*  
City Attorney

**Recommendation:** Approve the attached funding agreement and resolution for acceptance of the State fiscal appropriation.

Approved For Submittal By:

*Stanley Henderson* 12/30/15  
\_\_\_\_\_

Department Director

*Jim P. [Signature]*  
\_\_\_\_\_ City Manager

CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN

Resolution No.: \_\_\_\_\_  
Ordinance No.: \_\_\_\_\_  
Approved: \_\_\_\_\_  
Other: \_\_\_\_\_

Continued To: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
File No.: \_\_\_\_\_



December 9, 2015

Mr. Stan Henderson  
Public Works Director  
City of Gallup  
P.O. Box 1270  
Gallup, New Mexico 87305

**RE: Agreement for CN C6151029, Appropriation ID 15-1029**

Dear Mr. Henderson:

Enclosed for your coordination of signatures are three originals of the Severance Tax Agreement. **Please return them to the District Capital Coordinator.** DO NOT fill in the date on the first page of the enclosed Agreements. An original will be mailed to you at the time they are fully executed. The Agreement contains the standard terms and conditions required by DFA to ensure proper accounting of capital funds to include the reporting requirements listed in Article VIII. The City should review the terms and conditions listed in the Agreement carefully to ensure compliance.

The Department of Finance and Administration is working to improve the management of capital appropriations granted to and administered by local entities. As part of this process, **DFA is requiring monthly electronic reporting using the Capital Project Monitoring System (CPMS).** The City can access CPMS at the following web site <http://cpms.dfa.state.nm.us/Login.aspx>. The City will need to log in as a local entity and report the status on all of the City's open General Fund and Severance Tax projects. The City of Gallup should contact Jimmy Rodriguez with DFA, State Budget Division Capital Outlay Bureau at (505) 827-3884 or e-mail [JimmyN.Rodriguez@state.nm.us](mailto:JimmyN.Rodriguez@state.nm.us) to obtain a user id and password.

If you have any questions concerning the Agreement or if I can be of further assistance, please contact me at 505-476-3784.

Sincerely,

Sean Sandoval  
T/LPA /Capital Outlay Program Manager  
Project Oversight Division

Concur:

District Capital Coordinator

REC'D  
DEC 18 2015  
ENGINEERING  
BY *ADIC* TIME *10:57am*

**Susana Martinez**  
Governor

**Tom Church**  
Cabinet Secretary

**Commissioners**

**Ronald Schmeits**  
Chairman  
District 4

**Dr. Kenneth White**  
Secretary  
District 1

**David Sepich**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Butch Mathews**  
Commissioner  
District 5

**Jackson Gibson**  
Commissioner  
District 6

Enclosure (1)

Contract Number: \_\_\_\_\_  
Vendor Number: 0000054334  
Control Number: C6151029

**STATE OF NEW MEXICO  
DEPARTMENT OF TRANSPORTATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the Department of Transportation, P.O. Box 1149, Room 126, Santa Fe, New Mexico 87504-1149, hereinafter called the "Department" and City of Gallup, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2015, SB1, Chapter 3, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID 15-1029 NMDOT Control Number C6151029 \$650,000 APPROPRIATION  
REVERSION DATE: 6/30/2019

Laws of 2015 SB1, Chapter 3, Section 45, Six Hundred Fifty Thousand Dollars and No Cents (\$650,000) to acquire rights of way and to plan, design and construct a bridge across the Puerco river on Allison road in Gallup in McKinley county. and notwithstanding the provisions of Subsection A of Section 13-1-119.1 NMSA 1978, the department may use a design and build delivery system for the project funded through this appropriation

The Grantee's total reimbursements shall not exceed the appropriation amount Six Hundred Fifty Thousand Dollars and No Cents \$650,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, , \$0.00, which equals Six Hundred Fifty Thousand Dollars and No Cents \$650,000 (the "Adjusted Appropriation Amount").

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<sup>1</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." "Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Gallup

Name: Stan Henderson

Title: Public Works Director

Address: P.O. Box 1270, Gallup, New Mexico 87305

Email: pubwrks@ci.gallup.nm.us

Telephone: 505-863-1290

Department: Department of Transportation District 6 Office  
Name: Joann Garcia  
Title: Local Government Road Fund Coordinator  
Address: P.O. Box 2160, Milan, NM 87021  
Email: Joann.garcia2@state.nm.us  
Telephone: 505-285-3288  
FAX: 505-285-3251

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on 6/30/2019 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

#### **ARTICLE V. EARLY TERMINATION**

##### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State

of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

**B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term “non-appropriate” or “non-appropriation” includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department’s decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

**C. Limitation on Department’s Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department’s sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department’s sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Paper Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

### **B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

### **C. Paperless Reporting**

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report periodic and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

### **D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable

period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

## **ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

### **B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

## **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
- (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

**B. The Grantee hereby represents and warrants the following:**

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or

employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. LIABILITY**

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

#### **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

#### **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a “non-appropriations” clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Gallup may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Gallup’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Gallup or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Gallup or the Department.”

#### **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Gallup may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Gallup only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

#### **XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

- A. Throughout the term of this Agreement, Grantee shall:
1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
  2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
  3. timely submit all required financial reports to its budgetary oversight agency (if any); and

4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**DEPARTMENT OF TRANSPORTATION**

\_\_\_\_\_  
Cabinet Secretary or Designee

\_\_\_\_\_  
Date

**REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL**

Cynthia A. Christ  
By: Cynthia Christ

Its: Assistant General Counsel

12-9-15  
Date



**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
PAPER PERIODIC/FINAL REPORT  
EXHIBIT 1**

PERIODIC REPORT     FINAL REPORT

Grantee: \_\_\_\_\_

Project Number: \_\_\_\_\_ Reporting Period: \_\_\_\_\_

1. Please provide a detailed status of project referenced above.

**A. Third Party Obligations**

Purchase Order or Contract # \_\_\_\_\_

Name of Contractor or Vendor: \_\_\_\_\_

Amount of Third Party Obligation: \_\_\_\_\_

Date Executed: \_\_\_\_\_

Termination Date: \_\_\_\_\_

**B. Project Phase**

Bonds Sold  Plan/Design  Bid Documents  Construction   
(provide anticipated date of commencement and completion for each phase)

2. Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

Total Amount of all Notices of Obligation to Reimburse: \_\_\_\_\_

Total Grant Amount Expended by Grantee to Date: \_\_\_\_\_

Grant Balance as of this Date: \_\_\_\_\_

Amount of Other Unexpended Funding Sources: \_\_\_\_\_

**PERIODIC REPORT**

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

**FINAL REPORT**

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

\_\_\_\_\_  
Grantee Representative/Title

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 2**

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_  
 B. Address: \_\_\_\_\_  
Complete Mailing, including Suite, if applicable  
 \_\_\_\_\_  
City State Zip  
 C. Phone No: \_\_\_\_\_  
 D. Grant No: \_\_\_\_\_  
 E. Project Title: \_\_\_\_\_  
 F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Grant Amount: \_\_\_\_\_  
 B. AIPP Amount (If Applicable) \_\_\_\_\_  
 C. Funds Requested to Date: \_\_\_\_\_  
 D. Amount Requested this Payment: \_\_\_\_\_  
 E. Grant Balance: \$0.00  
 F.  GF  GOB  STB (attach wire if 1st draw)  
 G. Payment Request No. \_\_\_\_\_

**III. Fiscal Year Expenditure Period Ending:**  
(check one)

- (Jan-Jun)  Fiscal  
 (Jul-Dec)  Year

**IV. Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

**Grantee Fiscal Officer**

**Grantee Representative**

Printed Name \_\_\_\_\_  
 Date: \_\_\_\_\_

Printed Name \_\_\_\_\_  
 Date: \_\_\_\_\_

SWORN TO AND SUBSCRIBED  
 before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_

SWORN TO AND SUBSCRIBED  
 before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

Notary Public \_\_\_\_\_  
 My Commission expires \_\_\_\_\_

**(Department Use Only)**

Vendor Code: \_\_\_\_\_  
 Loc No.: \_\_\_\_\_

Fund No.: \_\_\_\_\_

|  |      |
|--|------|
| Division Fiscal Officer  | Date |
| I certify that the Grantee financial and vendor file information agree with the above submitted information. |      |

|   |      |
|---|------|
| Division Project Manager  | Date |
| I certify that the Grantee records and related appropriation laws agree with the above submitted information. |      |

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 3**

DATE: \_\_\_\_\_

TO:           Grantee Representative: \_\_\_\_\_

FROM:       Department Representative: \_\_\_\_\_

SUBJECT:    Notice of Obligation to Reimburse Grantee

Project Number: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number C6151029 entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Third Party Obligation (includes purchase orders and contract) #: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Termination Date: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount adjusted for AIPP if applicable: \_\_\_\_\_

The Amount of this Notice of Obligation to Reimburse: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Reimburse as of this Date: \_\_\_\_\_

Department Representative: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **Attachment A**

### **The City of Gallup shall agree to comply with the following Provisions:**

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

### **The City of Gallup shall agree to comply with the following Lighting and Signal Provisions as applicable:**

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.

6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

RESOLUTION #R2016- 4

A RESOLUTION TO THE NEW MEXICO DEPARTMENT OF TRANSPORTATION  
FOR THE CITY OF GALLUP'S ACCEPTANCE OF STATE APPROPRIATION ID #15-1029

WHEREAS, the City of Gallup, NM was appropriated \$650,000 for its right-of-way acquisition, planning, design, and construction of a new bridge on Allison Road across the Puerco River by the 2015 State Legislature.

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NM THAT:

The City Of Gallup, NM desires the State appropriation, and that by approving this Resolution, its City Council is affirming that desire and accepting the aforementioned funding.

Designate the Mayor of Gallup as the official representative of the City for signing the associated funding agreement. And

Designate the Public Works Director as the official representative for signing Requests For Payment and other matters related to the associated funding agreement.

PASSED AND ADOPTED by the Gallup City Council this the 12<sup>th</sup> day of January 2016.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

*Enclosure (2)*

## **Discussion/Action Topic 4**

Construction Contract Award for Downtown NM 118  
Pedestrian Safety Improvements

Stan Henderson Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

**MEETING DATE: 12 January 2016**

**SUBJECT:** DOWNTOWN NM 118 PEDESTRIAN SAFETY IMPROVEMENTS;  
**CONSTRUCTION CONTRACT AWARD FOR**  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 6 January 2016  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** Subject project makes traffic calming, pedestrian safety, and ADA improvements along NM-118 from Strong Drive to the 3<sup>rd</sup> Street intersection downtown. (See attachment (1).) NM-118 right-of-way is owned by the State Of New Mexico. However, the City is the local lead for the subject project.

Engineer of record is Bohannan Huston of Albuquerque, NM. Construction administration and quality assurance is DePauli Engineering & Surveying of Gallup, NM. Time for completion is 120 days.

City Staff opened construction bids on 15 December 2015. There were three bidders:

|          | H.O.<br>Construction | Star Paving<br>Company | Kimo<br>Constructors | Engineer's<br>Estimate |
|----------|----------------------|------------------------|----------------------|------------------------|
| Base Bid | \$520,424.00         | \$599,220.60           | \$834,024.00         |                        |
| NMGRT    | \$43,260.25          | \$49,810.21            | \$69,328.26          |                        |
| Total    | \$563,684.25         | \$649,030.81           | \$903,352.46         | \$552,365.61           |

See attachment (2) for the bid tabs. Engineer's construction estimate is provided as attachment (3).

**Fiscal Impact:**

Reviewed By:

*Patty Holland*  
 \_\_\_\_\_  
 Finance Department

A revised project budget (including project funding) is provided by enclosure (4). As currently budgeted, project is short ~\$100K.

There is a project savings on the recently completed College and Hospital Drive Reconstruction Project. Staff proposes moving that savings (i.e. a City match) to the subject project for award. Please note that – as awarded – there will be no contingency for unforeseen conditions or customer change orders.

- Attachments:** (1) Project Termini/Location  
 (2) Bid Tabs of 15 Dec 15  
 (3) Engineer's Construction Estimate of 8 Aug 15  
 (4) Project Budget of 6 Jan 16

**Legal Review**

Approved As To Form:

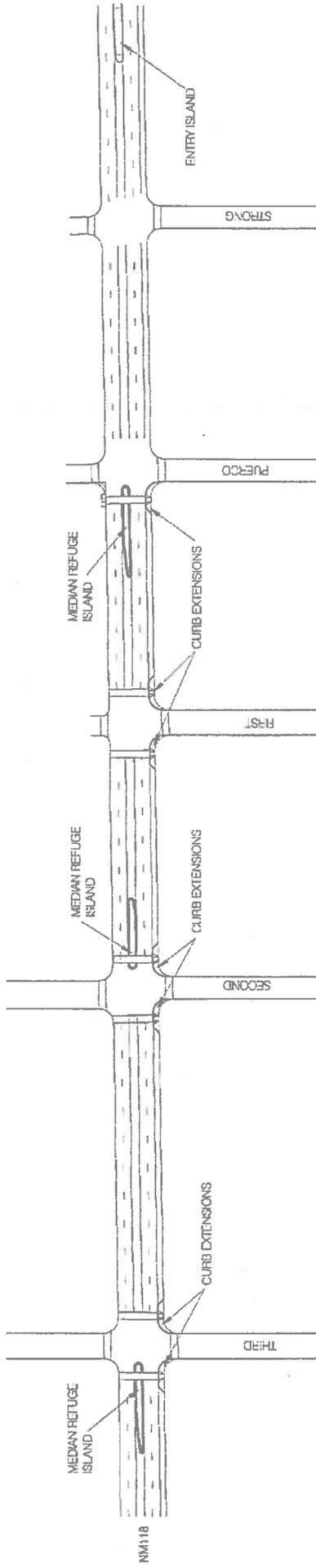
*[Signature]*  
 \_\_\_\_\_  
 City Attorney

**Recommendation:** City Staff considers H.O. Construction to be the “responsive low bidder” and their bid to be a “fair and reasonable” price. Staff recommends award of the City’s construction contract in the amount of \$563,684.25 including NMGRT to H.O. Construction.

|  |  |            |       |           |       |      |       |     |       |           |       |          |       |      |       |     |       |           |       |         |       |        |       |           |       |
|--|--|------------|-------|-----------|-------|------|-------|-----|-------|-----------|-------|----------|-------|------|-------|-----|-------|-----------|-------|---------|-------|--------|-------|-----------|-------|
| <p>Approved For Submittal By:</p> <p><u>Stanley Henderson</u> 1/6/15<br/>Department Director</p> <p><u>James A. [Signature]</u> Acting CM<br/>City Manager</p> | <p>CITY CLERK’S USE ONLY<br/>COUNCIL ACTION TAKEN</p> <table><tr><td>Resolution</td><td>_____</td><td>Continued</td><td>_____</td></tr><tr><td>No.:</td><td>_____</td><td>To:</td><td>_____</td></tr><tr><td>Ordinance</td><td>_____</td><td>Referred</td><td>_____</td></tr><tr><td>No.:</td><td>_____</td><td>To:</td><td>_____</td></tr><tr><td>Approved:</td><td>_____</td><td>Denied:</td><td>_____</td></tr><tr><td>Other:</td><td>_____</td><td>File No.:</td><td>_____</td></tr></table> | Resolution | _____ | Continued | _____ | No.: | _____ | To: | _____ | Ordinance | _____ | Referred | _____ | No.: | _____ | To: | _____ | Approved: | _____ | Denied: | _____ | Other: | _____ | File No.: | _____ |
| Resolution   | _____  | Continued  | _____ |           |       |      |       |     |       |           |       |          |       |      |       |     |       |           |       |         |       |        |       |           |       |
| No.:   | _____  | To:        | _____ |           |       |      |       |     |       |           |       |          |       |      |       |     |       |           |       |         |       |        |       |           |       |
| Ordinance  | _____  | Referred   | _____ |           |       |      |       |     |       |           |       |          |       |      |       |     |       |           |       |         |       |        |       |           |       |
| No.:   | _____  | To:        | _____ |           |       |      |       |     |       |           |       |          |       |      |       |     |       |           |       |         |       |        |       |           |       |
| Approved:  | _____  | Denied:    | _____ |           |       |      |       |     |       |           |       |          |       |      |       |     |       |           |       |         |       |        |       |           |       |
| Other:   | _____  | File No.:  | _____ |           |       |      |       |     |       |           |       |          |       |      |       |     |       |           |       |         |       |        |       |           |       |

# DT NM-118 Pedestrian Safety Improvements Prj

Tuesday, May 14, 2013 10:31 AM



Screen clipping taken: 5/14/2013 10:31 AM

Enclosure (1)

**CITY OF GALLUP  
PURCHASING DEPARTMENT -- TABULATION SHEET(S)  
BID ON: NM 118 Pedestrian Safety Improvements**

Open Date: December 15, 2015 at 2:00 P.M. (Local)  
BID NO. 1514

| Item No. | Items and Descriptions                  | Quantity | Kimo Constructors, Inc. | Star Paving Company | H.O. Construction, Inc. |
|----------|---|----------|-------------------------|---------------------|-------------------------|
|          | BASE BID (Excluding taxes)              |          | 834,024.20              | 599,220.60          | 520,424.00              |
|          | NMGRT (8.3125%)                         |          | 69,328.26               | 49,810.21           | 43,260.25               |
|          | <b>TOTAL BASE BID (Including taxes)</b> |          | <b>903,352.46</b>       | <b>649,030.81</b>   | <b>563,684.25</b>       |
|          |   |          |                         |                     |                         |
|          |   |          |                         |                     |                         |
|          |   |          |                         |                     |                         |
|          |   |          |                         |                     |                         |
|          |   |          |                         |                     |                         |
|          |   |          |                         |                     |                         |
|          |   |          |                         |                     |                         |
|          | NM RESIDENT CERTIFICATE                 |          | No                      | Yes                 | Yes                     |
|          | NM VETERANS' RESIDENT CERTIFICATE       |          | No                      | No                  | No                      |
|          |   |          |                         |                     |                         |
|          | BASE BID TOTAL W/PREFERENCE             |          | N/A                     | 616,579.27          | 535,500.03              |
|          |   |          |                         |                     |                         |
|          |   |          |                         |                     |                         |
|          |   |          |                         |                     |                         |
|          | <b>BID BOND:</b>                        |          | Yes                     | Yes                 | Yes                     |
|          | <b>SUBCONTRACTOR LISTING</b>            |          | Yes                     | Yes                 | Yes                     |
|          | <b>ACKNOWLEDGEMENT OF AMENDMENTS</b>    |          | N/A                     | N/A                 | N/A                     |

Enclosure(2)

**Bid Tabulation**

City of Gallup  
 NM 118 Pedestrian Improvements  
 CN 6100982  
 Formal Bid No. 1514  
 December 15, 2015 @ 2:00 p.m.

| ITEM | NO.    | DESCRIPTION   | H.O. Construction  |             |             | Star Paving |             |             | Kimo Construction |             |              |
|------|--------|---|--------------------|-------------|-------------|-------------|-------------|-------------|-------------------|-------------|--------------|
|      |        |   | ESTIMATED QUANTITY | UNIT PRICE  | BID AMOUNT  | UNIT PRICE  | BID AMOUNT  | UNIT PRICE  | BID AMOUNT        | UNIT PRICE  | BID AMOUNT   |
| 1    | 416000 | MINOR PAVEMENT                                      | 230 SY             | \$95.00     | \$21,850.00 |             | \$100.00    | \$23,000.00 |                   | \$156.80    | \$36,064.00  |
| 2    | 570437 | 24" STORM DRAIN CULVERT PIPE                        | 157 LF             | \$80.00     | \$12,560.00 |             | \$80.00     | \$12,560.00 |                   | \$90.85     | \$14,263.45  |
| 3    | 601000 | REMOVAL OF STRUCTURES AND OBSTRUCTIONS              | 1 LS               | \$10,000.00 | \$10,000.00 |             | \$56,000.00 | \$56,000.00 |                   | \$78,256.00 | \$78,256.00  |
| 4    | 601110 | REMOVAL OF SURFACING                                | 575 SY             | \$18.00     | \$10,350.00 |             | \$6.00      | \$3,450.00  |                   | \$80.50     | \$46,287.50  |
| 5    | 603250 | DROP INLET PROTECTION TYPE I                        | 20 EA              | \$150.00    | \$3,000.00  |             | \$185.00    | \$3,700.00  |                   | \$104.40    | \$2,088.00   |
| 6    | 608004 | CONCRETE SIDEWALK 4"                                | 1200 SY            | \$51.00     | \$61,200.00 |             | \$58.00     | \$69,600.00 |                   | \$101.00    | \$121,200.00 |
| 7    | 608406 | CONCRETE MEDIAN PAVEMENT 6" (COLORED AND PATTERNED) | 290 SY             | \$72.00     | \$20,880.00 |             | \$78.00     | \$22,620.00 |                   | \$109.00    | \$31,610.00  |
| 8    | 609100 | PINNED CURB   | 940 LF             | \$13.00     | \$12,220.00 |             | \$18.00     | \$16,920.00 |                   | \$13.95     | \$13,113.00  |

H.O. Construction

Star Paving

Kimo Construction

| ITEM | DESCRIPTION  | ESTIMATED QUANTITY | UNIT PRICE  | BID AMOUNT  | UNIT PRICE  | BID AMOUNT  | UNIT PRICE  | BID AMOUNT  |
|------|--|--------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 9    | 609200 HEADER CURB                                       | 170 LF             | \$24.00     | \$4,080.00  | \$18.00     | \$3,060.00  | \$40.30     | \$6,851.00  |
| 10   | 609462 CONCRETE VERTICAL CURB AND GUTTER TYPE C 8" X 32" | 1090 LF            | \$35.00     | \$38,150.00 | \$22.00     | \$23,980.00 | \$43.75     | \$47,687.50 |
| 11   | 608106 DRIVE PAD 6"                                      | 11 SY              | \$72.00     | \$792.00    | \$72.00     | \$792.00    | \$98.00     | \$1,078.00  |
| 12   | 621000 MOBILIZATION                                      | 1 LS               | \$15,000.00 | \$15,000.00 | \$90,000.00 | \$90,000.00 | \$26,096.00 | \$26,096.00 |
| 13   | 623311 CDI TYPE I-B, UP TO 4'                            | 7 EA               | \$3,800.00  | \$26,600.00 | \$4,500.00  | \$31,500.00 | \$6,260.00  | \$43,820.00 |
| 14   | 623312 CDI TYPE II-B, UP TO 4'                           | 9 EA               | \$4,900.00  | \$44,100.00 | \$6,000.00  | \$54,000.00 | \$9,230.00  | \$83,070.00 |
| 15   | 623600 JUNCTION BOX                                      | 14 EA              | \$3,900.00  | \$54,600.00 | \$2,500.00  | \$35,000.00 | \$1,588.00  | \$22,232.00 |
| 16   | 663865 ADJUST WATER METER TO GRADE                       | 1 EA               | \$200.00    | \$200.00    | \$550.00    | \$550.00    | \$564.00    | \$564.00    |
| 17   | 701000 PANEL SIGNS                                       | 63 SF              | \$26.00     | \$1,638.00  | \$16.25     | \$1,023.75  | \$18.00     | \$1,134.00  |
| 18   | 701100 STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS | 135 LF             | \$15.00     | \$2,025.00  | \$12.40     | \$1,674.00  | \$11.00     | \$1,485.00  |
| 19   | 701030 REMOVE AND RESET PANEL SIGN                       | 2 EA               | \$300.00    | \$600.00    | \$140.00    | \$280.00    | \$128.00    | \$256.00    |

H.O. Construction      Star Paving      Kimo Construction

| ITEM | DESCRIPTION  | ESTIMATED QUANTITY | UNIT PRICE  | BID AMOUNT  | UNIT PRICE  | BID AMOUNT  | UNIT PRICE  | BID AMOUNT  |
|------|--|--------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| 20   | 702610 PORTABLE CHANGEABLE MESSAGE BOARDS                      | 2 EA               | \$7,000.00  | \$14,000.00 | \$14,000.00 | \$28,000.00 | \$18,148.00 | \$36,296.00 |
| 21   | 702810 TRAFFIC CONTROL DEVICES FOR CONSTRUCTION                | 1 LS               | \$15,000.00 | \$15,000.00 | \$8,000.00  | \$8,000.00  | \$96,110.00 | \$96,110.00 |
| 22   | 704700 HOT THERMOPLASTIC PAVEMENT MARKING 4"                   | 6381 LF            | \$1.50      | \$9,571.50  | \$0.85      | \$5,423.85  | \$1.00      | \$6,381.00  |
| 23   | 704718 HOT THERMOPLASTIC PAVEMENT MARKING LEFT ARROW           | 7 EA               | \$135.00    | \$945.00    | \$129.00    | \$903.00    | \$200.00    | \$1,400.00  |
| 24   | 704720 HOT THERMOPLASTIC PAVEMENT MARKING WORD (ONLY)          | 7 EA               | \$300.00    | \$2,100.00  | \$140.00    | \$980.00    | \$239.00    | \$1,673.00  |
| 25   | 704728 HOT THERMOPLASTIC PAVEMENT MARKING YIELD LINE           | 37 LF              | \$60.00     | \$2,220.00  | \$17.00     | \$629.00    | \$13.35     | \$493.95    |
| 26   | 704764 RETROREFLECTIVE PREFORMED PATTERNED PAVEMENT STRIPE 24" | 981 LF             | \$18.50     | \$18,148.50 | \$19.00     | \$18,639.00 | \$20.00     | \$19,620.00 |
| 27   | 707004 TYPE I STANDARD, 4'                                     | 6 EA               | \$2,012.00  | \$12,072.00 | \$945.00    | \$5,670.00  | \$1,122.00  | \$6,732.00  |

| ITEM                      | DESCRIPTION  | H.O. Construction  |             |              | Star Paving |              |             | Kimo Construction |             |              |
|---------------------------|--|--------------------|-------------|--------------|-------------|--------------|-------------|-------------------|-------------|--------------|
|                           |  | ESTIMATED QUANTITY | UNIT PRICE  | BID AMOUNT   | UNIT PRICE  | BID AMOUNT   | UNIT PRICE  | BID AMOUNT        | UNIT PRICE  | BID AMOUNT   |
| 28                        | 707010 TYPE I STANDARD, 10'  | 2 EA               | \$3,986.00  | \$7,972.00   |             | \$2,788.00   | \$5,576.00  |                   | \$3,310.00  | \$6,620.00   |
| 29                        | 707013 TYPE I STANDARD, 13'  | 3 EA               | \$4,839.00  | \$14,517.00  |             | \$3,117.00   | \$9,351.00  |                   | \$3,701.00  | \$11,103.00  |
| 30                        | 710000 REMOVE & REPLACE PULL BOX                                       | 4 EA               | \$1,158.00  | \$4,632.00   |             | \$615.00     | \$2,460.00  |                   | \$730.20    | \$2,920.80   |
| 31                        | 713020 PEDESTRIAN PUSH BUTTON STATION                                  | 19 EA              | \$3,279.00  | \$62,301.00  |             | \$1,661.00   | \$31,559.00 |                   | \$1,973.00  | \$37,487.00  |
| 32                        | 716601 REMOVE & RESET EXISTING STREET LIGHT INCLUDING FOUNDATION (CIP) | 1 EA               | \$1,500.00  | \$1,500.00   |             | \$1,873.00   | \$1,873.00  |                   | \$1,331.00  | \$1,331.00   |
| 33                        | 721000 REMOVAL OF PAVEMENT STRIPE                                      | 1000 LF            | \$3.00      | \$3,000.00   |             | \$1.90       | \$1,900.00  |                   | \$2.10      | \$2,100.00   |
| 34                        | 801000 CONSTRUCTION STAKING BY THE CONTRACTOR                          | 1 LS               | \$12,600.00 | \$12,600.00  |             | \$28,547.00  | \$28,547.00 |                   | \$26,601.00 | \$26,601.00  |
|                           |  |                    |             | \$520,424.00 |             | \$599,220.60 |             |                   |             | \$834,024.20 |
| <b>SUBTOTAL BASE BID:</b> |  |                    |             |              |             |              |             |                   |             |              |

August-15

## ENGINEER'S ESTIMATE OF PROBABLE CONSTRUCTION COST USING UNIT BID PRICES

100% Estimate

Name of Road: NM 118 Pedestrian ImprovementsCounty of: McKinleyType: ROADWAY CONSTRUCTION / DRAINAGEPrepared by: BOHANNAN HUSTON, INC.Title: CONSULTING ENGINEER

| NO.    | ITEM  | UNIT | QTY     | PRICE    | AMOUNT       |
|--------|---|------|---------|----------|--------------|
| 416000 | MINOR PAVEMENT  | SY   | 230.00  | 100.00   | \$ 23,000.00 |
| 570437 | 24" STORM DRAIN CULVERT PIPE                            | LF   | 157.00  | 55.00    | \$ 8,635.00  |
| 601000 | REMOVAL OF STRUCTURES AND OBSTRUCTIONS                  | LS   | LS      | 30000.00 | \$ 30,000.00 |
| 601110 | REMOVAL OF SURFACING                                    | SY   | 575.00  | 16.00    | \$ 9,200.00  |
| 603250 | DROP INLET PROTECTION TYPE I                            | EA   | 20.00   | 80.00    | \$ 1,600.00  |
| 608004 | CONCRETE SIDEWALK 4"                                    | SY   | 1200.00 | 47.00    | \$ 56,400.00 |
| 608406 | CONCRETE MEDIAN PAVEMENT 6" (COLORED AND PATTERNED)     | SY   | 290.00  | 53.00    | \$ 15,370.00 |
| 609109 | PINNED CURB   | LF   | 940.00  | 14.00    | \$ 13,160.00 |
| 609200 | HEADER CURB   | LF   | 170.00  | 23.00    | \$ 3,910.00  |
| 609462 | CONCRETE VERTICAL CURB AND GUTTER TYPE C 8" X 32"       | LF   | 1090.00 | 18.00    | \$ 19,620.00 |
| 608106 | DRIVE PAD 6"  | SY   | 11.00   | 53.00    | \$ 583.00    |
| 621000 | MOBILIZATION  | LS   | LS      | 40000.00 | \$ 40,000.00 |
| 623311 | CDI TYPE I-B, UP TO 4'                                  | EA   | 7.00    | 6500.00  | \$ 45,500.00 |
| 623312 | CDI TYPE II-B, UP TO 4'                                 | EA   | 9.00    | 5200.00  | \$ 46,800.00 |
| 623600 | JUNCTION BOX  | EA   | 14.00   | 3500.00  | \$ 49,000.00 |
| 663865 | ADJUST WATER METER TO GRADE                             | EA   | 1.00    | 480.00   | \$ 480.00    |
| 701000 | PANEL SIGNS   | SF   | 63.00   | 15.00    | \$ 945.00    |
| 701100 | STEEL POST AND BASE POST FOR ALUMINUM PANEL SIGNS       | LF   | 135.00  | 11.00    | \$ 1,485.00  |
| 701030 | REMOVE AND RESET PANEL SIGN                             | EA   | 2.00    | 92.00    | \$ 184.00    |
| 702610 | PORTABLE CHANGEABLE MESSAGE BOARDS                      | EA   | 2.00    | 7650.00  | \$ 15,300.00 |
| 702810 | TRAFFIC CONTROL DEVICES FOR CONSTRUCTION                | LS   | LS      | 25000.00 | \$ 25,000.00 |
| 704700 | HOT THERMOPLASTIC PAVEMENT MARKING 4"                   | LF   | 6381.00 | 1.10     | \$ 7,019.10  |
| 704718 | HOT THERMOPLASTIC PAVEMENT MARKING LEFT ARROW           | EA   | 7.00    | 114.00   | \$ 798.00    |
| 704720 | HOT THERMOPLASTIC PAVEMENT MARKING WORD (ONLY)          | EA   | 7.00    | 166.00   | \$ 1,162.00  |
| 704728 | HOT THERMOPLASTIC PAVEMENT MARKING YIELD LINE           | LF   | 37.00   | 12.50    | \$ 462.50    |
| 704764 | RETROREFLECTIVE PREFORMED PATTERNED PAVEMENT STRIPE 24" | LF   | 981.00  | 16.60    | \$ 16,284.60 |
| 707004 | TYPE I STANDARD, 4'                                     | EA   | 6.00    | 706.00   | \$ 4,236.00  |

|        |   |    |         |          |    |           |
|--------|---|----|---------|----------|----|-----------|
| 707010 | TYPE I STANDARD, 10'  | EA | 2.00    | 650.00   | \$ | 1,300.00  |
| 707013 | TYPE I STANDARD, 13'  | EA | 3.00    | 785.00   | \$ | 2,355.00  |
| 710000 | STANDARD PULL BOX   | EA | 4.00    | 490.00   | \$ | 1,960.00  |
| 713020 | PEDESTRIAN PUSH BUTTON STATION                                  | EA | 19.00   | 265.00   | \$ | 5,035.00  |
| 716601 | REMOVE & RESET EXISTING STREET LIGHT INCLUDING FOUNDATION (CIP) | EA | 1.00    | 600.00   | \$ | 600.00    |
| 721000 | REMOVAL OF PAVEMENT STRIPE                                      | LF | 1000.00 | 0.60     | \$ | 600.00    |
| 801000 | CONSTRUCTION STAKING BY THE CONTRACTOR                          | LS | LS      | 25000.00 | \$ | 25,000.00 |

|                              |                     |
|------------------------------|---------------------|
| <b>SUBTOTAL</b>              | \$472,984.20        |
| 8% ENGINEERING & CONTINGENCY | <u>\$37,838.74</u>  |
| <b>SUB TOTAL</b>             | <b>\$510,822.94</b> |
| NMGRT @ 8.3125               | \$41,542.68         |
| <b>SUB TOTAL</b>             | <b>\$552,365.61</b> |
| CONSTRUCTION MANAGEMENT      | \$84,000.00         |
| QA TESTING                   | \$6,800.00          |
| <b>TOTAL</b>                 | <b>\$643,165.61</b> |

DOWNTOWN NM 118 PEDESTRIAN SAFETY IMPROVEMENTS PRJ  
Project Budget

| Line Item Description            | Weight           | Estimated Amounts | SubTotals            | Comments   |
|----------------------------------|------------------|-------------------|----------------------|--|
| <b>PROJECT REVENUE</b>           |                  |                   | <b>\$ 903,045.78</b> |  |
| BID Planning Funding             |                  | \$ 30,805.83      |                      | For Feasibility Study  |
| BID Construction Contribution    |                  |                   |                      | \$30,000 Commitment  |
| City Starting Budget             |                  | \$ 45,163.00      |                      | For Engr Design (Fr PW/CE)   |
| City Budget Adjustment           |                  | \$ 13,378.52      |                      | For Engr Design (Fr PW/CE)   |
| City Budget Adjustment           |                  | \$ 67,698.43      |                      | For Prj Certifications (Fr PW/CE)  |
| City Budget Adjustment           |                  | \$ 54,000.00      |                      | For ROW Maps/Certifications (Fr Fund 399)                                    |
| City Budget Adjustment           |                  | \$ 100,000.00     |                      | For Construction;<br>(Transfer City Match Balance<br>Fr College/Hospital Dr) |
| 2013 Legislature Appropriation   |                  | \$ 175,000.00     |                      |  |
| 2015 Legislature Reauthorization |                  | \$ (175,000.00)   |                      | Clawed Back By Senator Munoz   |
| 2014 TAP Funding                 |                  | \$ 430,856.00     |                      |  |
| City TAP Match                   |                  | \$ 73,423.00      |                      |  |
| 2015 TAP Funding                 |                  | \$ 74,772.00      |                      |  |
| City TAP Match                   |                  | \$ 12,742.00      |                      |  |
| City Additional Funding          |                  | \$ 207.00         |                      |  |
| <b>PROJECT EXPENDITURES</b>      |                  |                   |                      |  |
| <b>Project Planning</b>          | <b>5.4651%</b>   |                   | <b>\$ 30,805.83</b>  |  |
| Feasibility Study                |                  | \$ 30,805.83      |                      | BHI PO #072491   |
| Property Acquisition             |                  |                   |                      | BID Funded<br>(Incl NMGRT)   |
| <b>A/E Professional Services</b> | <b>22.3955%</b>  |                   | <b>\$ 126,239.95</b> |  |
| Independent Cost Estimate        |                  |                   |                      |  |
| A/E Design                       |                  | \$ 45,163.00      |                      | BHI PO #75686  |
| Project Certifications           |                  | \$ 67,698.43      |                      | BHI PO #75686  |
| Special Reports                  |                  |                   |                      |  |
| = DT NM 118 Storm Drainage       |                  | \$ 13,378.52      |                      | BHI PO #75686  |
| Material Submittal Review        |                  |                   |                      |  |
| NM Gross Receipt Tax             |                  | \$ -              |                      | Included Above PO Amounts.   |
| <b>Construction Management</b>   | <b>32.3070%</b>  |                   | <b>\$ 182,109.40</b> |  |
| Independent Cost Estimate        |                  |                   |                      |  |
| Contract/Grant Administration    |                  | \$ 175,000.00     |                      | DES PO #080253   |
|                                  |                  | \$ (121,000.00)   |                      | DES PO #080253   |
|                                  |                  | \$ 128,109.40     |                      | DES PO #082766   |
| Bid Assistance                   |                  |                   |                      |  |
| -ROW Maps/Certification          |                  |                   |                      | See DES PO #080253 \$54K   |
| Quality Assurance                |                  |                   |                      |  |
| Material Testing                 |                  |                   |                      |  |
| NM Gross Receipt Tax             |                  |                   |                      | Included Above PO Amounts  |
| <b>Construction</b>              | <b>100.0000%</b> |                   | <b>\$ 563,684.25</b> |  |
| Base Bid                         |                  | \$ 520,424.00     |                      | HO Construction's Bid of 15 Dec 15   |
| Bid Additives                    |                  | \$ -              |                      | None   |
| NM Gross Receipt Tax             | 8.3125%          | \$ 43,260.25      |                      |  |
| <b>Construction Changes</b>      | <b>0.0000%</b>   |                   | <b>\$ -</b>          |  |
| 1                                |                  |                   |                      |  |
| 2                                |                  |                   |                      |  |
| 3                                |                  |                   |                      |  |
| 4                                |                  |                   |                      |  |
| 5                                |                  |                   |                      |  |
| NM Gross Receipt Tax             |                  |                   |                      |  |
| <b>Contingency</b>               | <b>0.0000%</b>   | <b>\$ -</b>       | <b>\$ -</b>          |  |
| <b>Total Estimated Costs</b>     |                  |                   | <b>\$ 902,839.43</b> |  |
| <b>PROJECT BALANCE</b>           |                  |                   | <b>\$ 206.35</b>     |  |

123 Soft Number (Estimate)  
123 Hard Number (PO or Contract)

Enclosure (4)

DOWNTOWN NM 118 PEDESTRIAN SAFETY IMPROVEMENTS PRJ  
Project Budget

**Funding Summary:**

|                |                  |                      |                                       |
|----------------|------------------|----------------------|---------------------------------------|
| BID Funds      | 3.4113%          | \$ 30,805.83         |                                       |
| City Funds     | 40.5973%         | \$ 366,611.95        |                                       |
| State Funds    | 0.0000%          | \$ -                 |                                       |
| Federal Funds  | <u>55.9914%</u>  | <u>\$ 505,628.00</u> |                                       |
|                | <u>100.0000%</u> | <u>\$ 903,045.78</u> |                                       |
| <br>           |                  |                      |                                       |
| Indirect Costs | 37.5654%         | \$ 339,155.18        | Feasibility, Design, n Certifications |
| Direct Costs   | <u>62.4346%</u>  | <u>\$ 563,684.25</u> | Construction                          |
|                | <u>100.0000%</u> | <u>\$ 902,839.43</u> |                                       |

## **Discussion/Action Topic 5**

Resolution No. R2016-5;  
A Resolution Adopting a City Residential Anti-Displacement  
and Relocation Assistance Plan for Calendar Year 2016

Stan Henderson, Public Works Director



**CITY OF GALLUP**  
**COUNCIL STAFF SUMMARY FORM**

**MEETING DATE:** 12 January 2016

**SUBJECT:** CDBG Residential Anti-Displacement & Relocation Assistance Plan  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 28 December 2015  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** Whenever Federal funds, such as CDBG, are used in a project involving the acquisition, rehabilitation, or demolition of real property, a Federal law known as the Uniform Relocation Assistance and Real Properties Acquisition Policies Act (URA) may apply. The purpose of the URA is to provide, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG funded project or activity. To that end, an anti-displacement and relocation assistance plan must be adopted by the City Council. **This plan must be adopted by resolution annually whether or not the Grantee is undertaking relocation activities.**

**Fiscal Impact:**

Reviewed By: Patty Holland  
Finance Department

None. CDBG grant administration and documentation requirement.

**Enclosures:** (1) Resolution 2016- 5 Adopting A City Residential Anti-Displacement & Relocation Assistance Plan  
(2) Residential Anti-Displacement And Relocation Plan

**Legal Review:**

Approved As To Form: [Signature]  
City Attorney

**Recommendation:** Approved the attached resolution for adoption of said residential anti-displacement and relocation assistance plan. Resolution is attached as enclosure (1), and the plan itself is attached as enclosure (2).

Approved For Submittal By:

Stanley Henderson 12/28/15  
Department Director  
[Signature]  
City Manager

CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN

Resolution No.: \_\_\_\_\_ Continued To: \_\_\_\_\_  
Ordinance No.: \_\_\_\_\_ Referred To: \_\_\_\_\_  
Approved: \_\_\_\_\_ Denied: \_\_\_\_\_  
Other: \_\_\_\_\_ File No.: \_\_\_\_\_

RESOLUTION R2016- 5  
A RESOLUTION ADOPTING A  
CITY RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN  
FOR CALENDAR YEAR 2016

WHEREAS, when Federal funds such as Community Development Block Grants (CDBG) are used in a project involving the acquisition, rehabilitation, or demolition of real property, a Federal law known as the Uniform Relocation Assistance and Real Properties Acquisition Policies Act (URA) may apply.

WHEREAS, the purpose of the URA is to provide, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG funded project or activity.

WHEREAS, to that end, an anti-displacement and relocation assistance plan must be adopted by the City Council. This plan must be adopted by resolution annually whether or not the City is undertaking relocation activities.

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

- City Of Gallup, NM adopts the attached Residential Anti-Displacement And Relocation Plan for calendar year 2016.

PASSED, APPROVED, and ADOPTED this 12th day of January 2016.

CITY OF GALLUP, NEW MEXICO

By: \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Al Abeita, City Clerk

# COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

## 2016 ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE PLAN

### I. Background/Introduction

Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)(4)), Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(16)), and implementing regulations at 24 CFR Part 42, specify that a grantee under the Community Development Block Grant (CDBG) must certify that it has in effect and is following a “residential Anti-displacement and relocation assistance plan” (Plan). As a CDBG grantee, [City of Gallup, NM](#) must certify to State of New Mexico Department of Finance and Administration Local Government Division that it has and is following such a Plan.

The Plan must include three components: 1) one-for-one replacement requirements for lower-income housing units, 2) relocation assistance, and 3) a description of the steps [City of Gallup, NM](#) will take to minimize displacement.

### II. Activities Covered by the Plan

All activities involving the use of CDBG funds that cause displacement as a direct result of demolition or conversion of a lower-income dwelling are subject to the requirements specified in the Plan. Activities for which funds are first obligated on or after September 30, 1988 are subject to the requirements specified in the Plan, without regard to the source year of the funds.

### III. Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) govern displacement that directly results from acquisition, rehabilitation, or demolition of real property when federal funds are used. [City of Gallup, NM](#) Residential Anti-displacement and Relocation Assistance Plan is in no way intended to supersede the URA. CDBG assisted activities may still be subject to the requirements of the URA.

### IV. One-for-One Replacement Units

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income units. Replacement lower-income dwelling units may be provided by any governmental agency or private developer and must meet the following requirements:

- A. The units must be located within [City of Gallup, NM](#) to the extent feasible, the units shall be located within the same neighborhood as the units replaced
- B. The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in the units shall be in accordance with applicable local housing occupancy codes. The units may not be

replaced with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless the [City of Gallup, NM](#) has provided information demonstrating that such a proposed replacement is consistent with the needs assessment contained State of New Mexico Department of Finance and Administration Local Government Division HUD-approved Consolidated Plan.

- C. The units must be in standard condition and must at a minimum meet Section 8 Program Housing Quality Standards. Replacement lower-income units may include units brought from a substandard condition to standard condition if:
  - 1 no person was displaced from the unit; and
  - 2 the unit was vacant for at least 3 months before execution of the agreement between the [City of Gallup, NM](#) and the property owner.
- D. The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under Section F below and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.
- E. The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance
- F. Before the [City of Gallup, NM](#) enters into a contract committing it to provide CDBG funds for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, the [City of Gallup, NM](#) must make public and submit in writing to State of New Mexico

Department of Finance and Administration Local Government Division the following information:

- 1 A description of the proposed assisted activity;
- 2 The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;
- 3 A time schedule for the commencement and completion of the demolition or conversion;
- 4 The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data is not available at the time of the submission to State of New Mexico Department of Finance and Administration Local Government Division, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwellings units by size shall be submitted and disclosed to the public as soon as it is available;
- 5 The source of funding and time schedule for the provision of replacement dwelling units;
- 6 The basis for concluding that each replacement unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and

- 7 Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the needs assessment contained in the State of New Mexico Department of Finance and Administration Local Government Division Consolidated Plan.
- G. The one-for-one replacement requirements may not apply if HUD determines, based on objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within [City of Gallup, NM](#). In making such a determination, State of New Mexico Department of Finance and Administration Local Government Division will consider such factors as vacancy rates, numbers of lower-income units in the [City of Gallup, NM](#) and the number of eligible families on the Section 8 waiting list.

## V. Relocation Assistance

Each lower-income person who is displaced as a direct result of CDBG assisted demolition or conversion of a lower-income dwelling shall be provided with relocation assistance.

Relocation assistance includes advisory services and reimbursement for moving expenses, security deposits, credit checks, other moving expenses, including certain interim living costs, and certain replacement housing assistance.

Displaced persons have the right to elect, as an alternative to the benefits described in this Plan, to receive benefits under the URA, if they determine that it is in their best interest to do so. The following relocation assistance shall be available to lower-income displacement persons:

- A. Displaced lower-income persons will receive the relocation assistance required under 49 CFR 24, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the person elects to receive assistance under the URA or the assistance required by CDBG regulations. Relocation notices must be distributed to the affected persons in accordance with 49 CFR 24.203 of the URA;
- B. The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit and for credit checks required to rent or purchase the replacement dwelling unit;
- C. Actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:
  - 1 The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or
  - 2 The person is displaced from a lower-income dwelling unit, none of the comparable replacement units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available through one-for-one replacement requirements
- D. Replacement Housing Assistance. Displaced persons are eligible to receive one of the following two forms of replacement housing assistance:
  - 1 Each person shall be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of

utilities for a replacement dwelling to the “Total Tenant Payment”, as determined under 24 CFR 813.107. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance under the Section 8 program. Where Section 8 assistance is provided to the displaced person, the [City of Gallup, NM](#) must provide the person with referrals to comparable units whose owners are willing to participate in Section 8 program to the extent that cash assistance is provided, it will be provided in installments.

- 2 In lieu of the housing voucher, certificate or cash assistance described above, the person may elect to receive a lump sum payment allowing them to secure participation in a housing cooperative or mutual housing association. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the “Total Tenant Payment”, as determined under 24 CFR 813.107, from the monthly cost of rent and average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings in a federally insured financial institution conducting business within [City of Gallup, NM](#).

Displaced lower-income tenants shall be advised of their right to elect relocation assistance pursuant to the URA and the regulations at 49 CFR 24 as an alternative to the relocation assistance available under CDBG regulations.

## VI. Eligibility for Relocation Assistance

A lower-income person is eligible for relocation assistance if they are considered to be a “displaced person” as defined in 24 CFR 42.305. A displaced person means a lower-income person who, in connection with an activity assisted under the CDBG program, permanently moves from real property or permanently moves personal property from real property as a direct result of demolition or conversion of a lower-income dwelling.

For purposes of this definition, a permanent move includes a move made permanently and:

- A. After notice by the owner to move from the property, if the move occurs on or after the date of the submission of a request to the [City of Gallup, NM](#) for CDBG assistance that is later approved for the requested activity; or
- B. After notice by the owner to move from the property, if the move occurs on or after the date of the initial official submission to HUD of the consolidated plan under 24 CFR Part 91 describing the assisted activity; or
- C. Before the dates described in A & B above, if the [City of Gallup, NM](#) or State of New Mexico Department of Finance and Administration Local Government Division determines that the displacement was a direct result of conversion or demolition in connection with a CDBG assisted activity; or
- D. By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
  - 1 The tenant moves after execution of the CDBG agreement covering the acquisition, rehabilitation or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a

suitable, decent, safe and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions, including a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent before such agreement, or the total tenant payment as determined under 24 CFR 813.107 if the tenant is lower-income, or 30 percent of gross household income if the tenant is not lower-income.

- 2 The tenant is required to relocate temporarily, does not return to the building/complex, and either is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.
- 3 The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

If the displacement occurs on or after the appropriate date described in A & B above, the lower-income person is not eligible for relocation assistance if:

- A. The person is evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the [City of Gallup, NM](#) determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;
- B. The person moved into the property on or after the date described in A & B above after receiving written notice of the expected displacement; or
- C. The [City of Gallup, NM](#) determines that the displacement was not a direct result of the CDBG assisted activity and the State of New Mexico Department of Finance and Administration Local Government Division concurs with this determination.

## VII. Minimizing Displacement

The CDBG regulations regarding the demolition or conversion of lower-income dwelling units are designed to ensure that lower-income persons are provided with adequate, affordable replacement housing. Naturally, involuntary displacement should be discouraged whenever a reasonable alternative exists. Involuntary displacement is extremely disruptive and disturbing, especially to lower-income persons who do not have the means to locate alternative housing.

There are various ways that displacement can be minimized. The following are steps that will be taken to minimize the involuntary displacement of lower-income persons when CDBG funds are involved:

- A. Screening of Applications All CDBG applications will be reviewed to determine whether involuntary displacement is likely to occur. Those applications involving displacement will receive a lower priority recommendation for funding unless it can be shown that alternatives are not available.
- B. Acquisition of Property Applicants who apply for CDBG funds to acquire property for the development of lower-income housing will be encouraged to purchase vacant land. In the case of in-fill and other projects where this is not feasible and the project involves

potential displacement, the applicant shall agree to allow the displaced lower-income person(s) to occupy the new housing at an affordable rent.

Applicants who utilize CDBG funds to rehabilitate or convert a lower-income unit to a non-residential use will be required to supply replacement housing consistent with paragraph IV, as well as relocation assistance.

- C. Cost of Relocation Assistance The cost of any required relocation assistance and the provision of replacement housing will be borne by the applicant and may be paid for out of CDBG funds awarded to the project.

## VIII. Definitions

- A. "Comparable replacement dwelling unit" means a dwelling unit that:
  - 1 Meets the criteria of 49 CFR 24.2(d)(1) through (6); and
  - 2 Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under 24 CFR 813.107 after taking into account any rental assistance the household would receive.
- B. "Lower-income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.
- C. "Standard condition" means units that at a minimum meet the Existing Housing Quality Standards of the Section 8 rental subsidy program.
- D. "Substandard condition suitable for rehabilitation" means units with code violations that can be brought to Section 8 Housing Quality Standards within reasonable monetary amounts.
- E. "Vacant occupiable dwelling unit" means a dwelling unit that is in a standard condition; a vacant dwelling unit that is in substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by the [City of Gallup, NM](#) covering the rehabilitation or demolition.

## IX. Grievances

The [City of Gallup, NM](#) will provide timely written answers to written complaints and grievances within 15 working days where practical. Action items:

- A. Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.
- B. Allow for appeal of a decision to a neutral authority.
- C. File a detailed record of all complaints or grievances and responses in one central location with easy public access.

## IX. Certification

The City of Gallup, NM herewith certifies to follow the Anti-displacement relocation plan described above and adopt the plan by resolution annually.

Plan Adoption Date: \_\_\_\_\_

Adoption Instrument: \_\_\_\_\_

Certified By: \_\_\_\_\_

Mayor

\_\_\_\_\_

Date

## **Discussion/Action Topic 6**

Resolution No. R2016-6;  
A Resolution Adopting a HUD Section 3 Plan  
for Calendar Year 2016

Stan Henderson, Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: 12 January 2016

**SUBJECT:** CDBG Housing & Urban Development (HUD) Section 3 Plan  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 28 December 2015  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** Section 3 is a provision of the HUD Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency. The Section 3 Program requires that recipients of certain HUD financial assistance - to the greatest extent feasible - provide job training, employment, and contracting opportunities for low or very low income residents in connection with projects and activities in their community.

Every CDBG grantee is required to annually adopt a "Section 3 Plan" by resolution for CDBG projects.

**Fiscal Impact:**

Reviewed By: Patty Holland  
Finance Department

None. CDBG grant administration and documentation requirement.

**Enclosures:** (1) Resolution 2016- 6 Adopting A City Section 3 Plan  
(2) Proposed 2016 HUD Section 3 Plan

**Legal Review:**

Approved As To Form: [Signature]  
City Attorney

**Recommendation:** Approved the attached resolution for adoption of a HUD Section 3 plan. Resolution is attached as enclosure (1), and the proposed plan itself is attached as enclosure (3).

Approved For Submittal By:

Stanley Henderson 12/28/15  
Department Director

[Signature]  
City Manager

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|                 |       |               |       |
|-----------------|-------|---------------|-------|
| Resolution No.: | _____ | Continued To: | _____ |
| Ordinance No.:  | _____ | Referred To:  | _____ |
| Approved:       | _____ | Denied:       | _____ |
| Other:          | _____ | File No.:     | _____ |

RESOLUTION R2016-6  
A RESOLUTION ADOPTING A  
HUD SECTION 3 PLAN  
FOR CALENDAR YEAR 2016

WHEREAS, Section 3 is a provision of the HUD Act of 1968 that helps foster local economic development, neighborhood economic improvement, and individual self-sufficiency.

WHEREAS, the Section 3 Program requires that recipients of certain HUD financial assistance - to the greatest extent feasible – provide job training, employment, and contracting opportunities for low or very low income residents in connection with projects and activities in their community. And

WHEREAS, every CDBG grantee is required to annually adopt a “Section 3 Plan” by resolution for CDBG projects.

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

- City Of Gallup, NM adopts the attached Housing And Urban Development Section 3 Plan for calendar year 2016.

PASSED, APPROVED, and ADOPTED this 12th day of January 2016.

CITY OF GALLUP, NEW MEXICO

By: \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Al Abeita, City Clerk

# COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

## 2016 SECTION 3 PLAN WITH REQUIRED ELEMENTS

The [City of Gallup, NM](#) is committed to comply with Section 3 of the Housing and Urban Development Act of 1968. This Act encourages the use of small local businesses and the hiring of low income residents of the community.

The [City of Gallup, NM](#) has appointed **Public Works Director** as the Section 3 Coordinator, to advise and assist key personnel and staff on Section 3, to officially serve as focal point for Section 3 complaints, and as the on-site monitor of prime contractors and sub-contractors to insure the implementation and enforcement of their Section 3 plans. The approval or disapproval of the Section 3 plan is the ultimate responsibility of the **City Manager**. Documentation of efforts will be retained on file for monitoring by the state.

Therefore, the [City of Gallup, NM](#) shall:

1. Hiring
  - a. Advertise for all [City of Gallup, NM](#) positions in local newspapers
  - b. List all [City of Gallup, NM](#) job opportunities with the State Employment Service
  - c. Give preference in hiring to lower income persons residing in the [City of Gallup, NM](#). This means that if two equally qualified persons apply and one is a resident of the [City of Gallup, NM](#) and one is not, the resident will be hired.
  - d. Maintain records of [City of Gallup, NM](#) hiring as specified on this form:

| ANTICIPATED _____  |                             |  | HIRING YEAR _____     |   |
|--------------------|-----------------------------|--|-----------------------|---|
| PLANNED            |                             |  | ACTUAL                |   |
| Job Classification | # of Positions to be Filled | # of Positions to be Filled by Lower Income <a href="#">City of Gallup, NM</a> Residents | # of Positions Filled | Positions Filled by Lower Income <a href="#">City of Gallup, NM</a> Residents |
|                    |                             |  |                       |   |
|                    |                             |  |                       |   |
|                    |                             |  |                       |   |

- e. **City's Human Resources Department shall be responsible for the "hiring" provisions and plans herein.**

## 2. Contracting

- a. The [City of Gallup, NM](#) will compile a list of businesses, suppliers and contractors located in the [City of Gallup, NM](#).
- b. These vendors will be contacted for bid or quotes whenever the [City of Gallup, NM](#) requires supplies, services or construction.
- c. Preference will be given to small local businesses. This means if identical bids/quotes are received from a small business located within the [City of Gallup, NM](#) and one from outside the [City of Gallup, NM](#), the contract will be awarded to the business located within the community.
- d. **City's Purchasing Department shall be responsible for the "contracting" provisions herein.**

## 3. Training

The [City of Gallup, NM](#) shall maintain a list of all training programs operated by the [City of Gallup, NM](#) and its agencies and will direct them to give preference to [City of Gallup, NM](#) residents. The [City of Gallup, NM](#) will also direct all CDBG sponsored training to provide preference to [City of Gallup, NM](#) residents.

## 4. CDBG Contracts

All CDBG bid proposals and contracts shall include the following Section 3 language.

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that the greatest extent feasible, opportunities for training and employment be given lower income residents of the project areas, and contracts for work in connection with the project be awarded to business concerns residing in the project area.
- b. The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR and all applicable rules and orders of the Department issued there-under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the subcontractor has first provided it with the requirements of these regulations.
- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department, issued thereunder prior to the execution of the

contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

The [City of Gallup, NM](#) shall require each contractor to prepare a written Section 3 plan as a part of their bids on all jobs exceeding \$100,000. All Section 3 plans shall be reviewed and approved by the City's Equal Opportunity Section 3 Compliance Officer and retained for monitoring by the state.

The [City of Gallup, NM](#) will maintain all necessary reports and will insure that all contractors and subcontractors submit required reports.

#### LOWER INCOME CLARIFICATION

A family who resides in [City of Gallup, NM](#) and whose income does not exceed the income limit for the size of family as per the attached Section 8 Income Limit for [City of Gallup, NM](#). Information contained in our Section 3 Plan reflects the status of the [City of Gallup, NM](#) employees regarding lower income considerations based on their salary paid by the [City of Gallup, NM](#).

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Chief Executive Officer

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Date

## **Discussion/Action Topic 7**

Resolution No. R2016-7;  
2016 Community Development Block Grant (CDBG)  
Citizens Participation Plan

Stan Henderson, Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: 12 January 2016

**SUBJECT:** 2016 CDBG Citizens Participation Plan  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 28 December 2015  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** Developing a Citizen Participation Plan is a Federal requirement for grantees who receive CDBG funds. The Citizen Participation Plan states that citizens will be provided with reasonable notices and timely access to local meetings in order to solicit their input and project ideas for the CDBG program. Its adoption by resolution annually is a requirement for CDBG projects.

**Fiscal Impact:**

Reviewed By: Patty Holland  
Finance Department

None. CDBG grant administration and documentation requirement.

**Enclosures:** (1) Resolution 2016- 7 For Adoption Of A Citizens Participation Plan  
(2) Proposed 2016 Citizen Participation Plan

**Legal Review:**

Approved As To Form: [Signature]  
City Attorney

**Recommendation:** Approved the attached resolution for adoption of a 2016 CDBG Citizens Participation Plan. Resolution is attached as enclosure (1), and the proposed plan itself is attached as enclosure (2).

Approved For Submittal By:

Stanley Henderson 12/28/15  
Department Director

[Signature]  
City Manager

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Resolution No.: \_\_\_\_\_ Continued To: \_\_\_\_\_  
Ordinance No.: \_\_\_\_\_ Referred To: \_\_\_\_\_  
Approved: \_\_\_\_\_ Denied: \_\_\_\_\_  
Other: \_\_\_\_\_ File No.: \_\_\_\_\_

RESOLUTION #R2016-7

A RESOLUTION BY THE GALLUP CITY COUNCIL DIRECTED TO THE NEW MEXICO COMMUNITY DEVELOPMENT COUNCIL FOR PURPOSES OF PURSUING COMMUNITY DEVELOPMENT BLOCK GRANT SUPPORT FOR NEEDED INFRASTRUCTURE PROJECTS, TO ASSURE COMPLIANCE WITH REQUIREMENTS FOR PUBLIC PARTICIPATION, WITH EMPHASIS ON PARTICIPATION FROM, AND BENEFIT ON BEHALF OF LOW TO MODERATE INCOME CITIZENS.

WHEREAS, the City of Gallup has utilized the U.S. Department of Housing and Urban Development Community Development Block Grant Program to assist with addressing the needs of low and moderate income neighborhoods, elimination of slum and blight, and addressing economic development in Gallup; and

WHEREAS, the Community Development Block Grant Program requires citizen participation and input for the selection, application, and development process of CDBG funded projects, with particular emphasis on participation from persons of low and moderate income; and

WHEREAS, the City is required to provide adequate advance notice, equal access, and accommodation on behalf of all citizens, including disabled, and non-English speaking citizens for participation in meetings pertaining to the selection, application and development of CDBG funded projects; and

WHEREAS, appropriate records and information regarding the use of CDBG funds, both past and present, are considered public records and available for public review; and technical assistance is to be available to assure equal access to public process (meetings) and records; and a formal complaint process is required to assure equal access and participation; and

WHEREAS, the City of Gallup wishes to continue to utilize CDBG funds to address needs for low to moderate income neighborhoods, elimination of slum and blight, and economic development.

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

- City Of Gallup, NM adopts the attached Citizens Participation Plan for calendar year 2016.

PASSED, APPROVED, and ADOPTED this 12th day of January 2016.

CITY OF GALLUP, NEW MEXICO

By: \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Al Abeita, City Clerk

# COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

## 2016 CITIZEN PARTICIPATION PLAN

### Introduction

In accordance with the 1987 revisions to the Housing and Community Development Act and in an effort to further encourage citizen participation, [City of Gallup, NM](#) has prepared and adopted this Citizen Participation Plan.

### Objective A

[City of Gallup, NM](#) will provide for and encourage citizen participation within its area of jurisdiction, with particular emphasis on participation by persons of low and moderate income. *Action items:*

1. *Adopt and circulate an Open Meetings Resolution which provides citizens with reasonable notice of county/municipality upcoming meetings, actions and functions.*
2. *Develop press releases on county/municipality meetings, actions and hearings, and circulate to newspapers, radio and television media.*
3. *Develop and maintain listing of groups and representative of low and moderate income persons, and include on mailing lists of announcements, notices, press releases, etc.*

### Objective B

[City of Gallup, NM](#) will provide citizens with reasonable and timely access to local meetings, information and records relating to the proposed and actual use of CDBG funds. *Action items:*

1. *Public notices, press releases, etc., should allow for a maximum length of notice to citizens.*
2. *Appropriate information and records relating to the proposed and actual use of CDBG funds must be available upon request to all citizens. Personnel and income records may be exempted from these requirements.*
3. *Meetings, hearing, etc., should be conducted at times and locations conducive to public attendance, e.g., evenings, Saturdays.*

### Objective C

[City of Gallup, NM](#) will provide technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals. *Note: the level and type of assistance is to be determined by the county/municipality. Action items:*

1. *Low and moderate income groups should be advised that technical assistance, particularly in the area of community development, is available from the county/municipality upon request.*
2. *Document technical assistance provided to such groups and has documentation available for review.*

### Objective D

[City of Gallup, NM](#) will provide a minimum of two public hearings to obtain citizen participation and respond to proposals and questions at all stages of the Community Development Block Grant Program. *Action items:*

1. *Advise citizens of the CDBG program objectives, range of activities that can be applied for and other pertinent information.*

2. *Conduct a minimum of two public hearings:*
  - a. *One public hearing will be held to advise citizens of the program objectives and range of activities that can be applied for, and to obtain the citizen's views on community development and housing needs, to include the needs of low and moderate income people. This hearing will take place prior to the selection of the project to be submitted to the state for CDBG funding assistance.*
  - b. *A second public hearing will be held to review program performances, past use of funds and make available to the public its community development and housing needs, including the needs of low and moderate income families, and the activities to be undertaken to meet such needs.*
3. *Publish public hearing notices in the non-legal section of newspapers or in other local media. Evidence of compliance with these regulations will be provided with each CDBG application, i.e., hearing notice minutes of public meetings, list of needs and activities to be undertaken, etc. Amendments to goals, objectives and applications are also subject to public participation.*

#### Objective E

[City of Gallup, NM](#) will provide timely written answers to written complaints and grievances within 15 working days where practical. *Action items:*

1. *Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.*
2. *Allow for appeal of a decision to a neutral authority.*
3. *File a detailed record of all complaints or grievances and responses in one central location with easy public access.*

#### Objective F

[City of Gallup, NM](#) will identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate. *Action items:*

1. *Identify areas where large majorities of non-English speaking persons reside and make appropriate provisions when issues affecting these areas are to be discussed at public meetings, hearings, etc. Appropriate provisions will include having interpreters available at the meeting and having briefing material available in the appropriate language.*
2. *Maintain records/rosters of public hearing attendees and proceedings to verify compliance with this objective.*

## **Discussion/Action Topic 8**

Resolution No. R2016-8;  
2016 CDBG Procurement Policy Adoption

Stan Henderson, Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: 12 January 2016

**SUBJECT:** 2016 CDBG Procurement Policy Adoption  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 28 December 2015  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** NMDFA requires that the City annually adopt a procurement policy by resolution for CDBG projects. As such, City is certifying that it complies with Federal Procurement Code (24 CFR Part 85.36) and NM Procurement Code (13-1-120 NMSA 1978).

**Fiscal Impact:**

Reviewed By:

*Patty Holland*  
Finance Department

None. CDBG grant administration and documentation requirement.

**Enclosures:** (1) Resolution 2016-8 For Adoption Of A City Procurement Policy

**Legal Review:**

Approved As To Form:

*[Signature]*  
City Attorney

**Recommendation:** Approved the attached resolution for adoption of a 2016 City Procurement Policy. Resolution is attached as enclosure (1).

Approved For Submittal By:

*Stanley Henderson* 12/28/15  
Department Director

*[Signature]*  
City Manager

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Resolution No.: \_\_\_\_\_ Continued To: \_\_\_\_\_  
Ordinance No.: \_\_\_\_\_ Referred To: \_\_\_\_\_  
Approved: \_\_\_\_\_ Denied: \_\_\_\_\_  
Other: \_\_\_\_\_ File No.: \_\_\_\_\_

RESOLUTION #R2016- 8

A RESOLUTION BY THE GALLUP CITY COUNCIL DIRECTED TO THE NEW MEXICO COMMUNITY DEVELOPMENT COUNCIL IN ORDER TO PURSUE COMMUNITY DEVELOPMENT BLOCK GRANTS FOR NEEDED INFRASTRUCTURE PROJECTS ON BEHALF OF THE CITY OF GALLUP'S LOW TO MODERATE INCOME CITIZENS.

WHEREAS, the City of Gallup, NM has utilized the U.S. Department of Housing and Urban Development's Community Development Block Grant Program to assist with addressing the needs of low and moderate income neighborhoods, elimination of slum and blight, and addressing economic development in Gallup; and

WHEREAS, the Community Development Block Grant Program requires annual adoption by resolution of the City of Gallup's procurement policy; and

WHEREAS, the City of Gallup, NM wishes to continue to utilize CDBG funds to address needs for low to moderate income neighborhoods, elimination of slum and blight, and economic development.

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

City of Gallup, NM certifies its compliance with Federal Procurement Code (24 CFR Part 85.36) and New Mexico Procurement Code (13-1-120 NMSA 1978) as a matter of City procurement policy.

PASSED, APPROVED, and ADOPTED this 12th day of January 2016.

CITY OF GALLUP, NEW MEXICO

By: \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Al Abeita, City Clerk

## **Discussion/Action Topic 9**

2016 CDBG Fair Housing Proclamation

Stan Henderson, Public Works Director



**CITY OF GALLUP**  
**COUNCIL STAFF SUMMARY FORM**

**MEETING DATE: 12 January 2016**

**SUBJECT:** 2016 CDBG FAIR HOUSING PROCLAMATION  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 28 December 2015  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** For CDBG funding, each local government must annually certify that it will affirmatively further fair housing. To that end, a "Fair Housing Proclamation" must be adopted by the local governing body at an open public meeting which publicizes the community's commitment to fair housing.

Staff proposes starting the New Year by proclaiming 16 February 2016 as Fair Housing Day. This date is also the day after Presidents' Day holiday.

**Fiscal Impact:**

Reviewed By:

*Patty Holland*  
Finance Department

None. CDBG grant administration and documentation requirement.

**Enclosures:**

(1) Proposed Fair Housing Proclamation

**Legal Review:**

Approved As To Form:

*[Signature]*  
City Attorney

**Recommendation:** Approved the attached proclamation of 16 February 2016 as Fair Housing Day. Proposed proclamation is attached as enclosure (1).

Approved For Submittal By:

*Stanley Henderson* 12/28/15

Department Director

*[Signature]*  
City Manager

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COUNCIL ACTION TAKEN

Resolution No.: \_\_\_\_\_  
Ordinance No.: \_\_\_\_\_  
Approved: \_\_\_\_\_  
Other: \_\_\_\_\_

Continued To: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
File No.: \_\_\_\_\_

# ***Fair Housing Proclamation***

*WHEREAS, fair and equal housing is a right guaranteed to all Americans; and*

*WHEREAS, the principle of fair and equal housing is a fundamental human entitlement; and*

*WHEREAS, all citizens have the right to live where they choose within their financial means; and*

*WHEREAS, people must not be denied housing because of race, color, religion, sex, national origin, handicap or familial status; and*

*WHEREAS, we must, as individuals, assure equal access to housing for all in our communities; and*

*WHEREAS, City Of Gallup, NM acknowledges the importance of assuring fair and equal treatment to all citizens;*

*NOW, THEREFORE I, Jackie McKinney, Mayor, do hereby proclaim - on behalf of the Gallup City Council – 16<sup>th</sup> of February 2016 as:*

## ***“Fair Housing Day”***

*Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_*

\_\_\_\_\_  
*(Elected Official and Title)*

## **Discussion/Action Topic 10**

Appointment of Terry Proffitt to the  
Labor Management Relations Board

Mayor Jackie McKinney

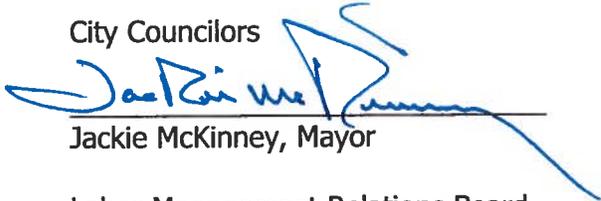


CITY OF GALLUP  
OFFICE OF THE MAYOR  
STATE OF NEW MEXICO

January 7, 2016

**MEMORANDUM**

TO: City Councilors

FROM:   
Jackie McKinney, Mayor

RE: Labor Management Relations Board

The current makeup of the Labor Management Relations Board consists of the following members: Terry Proffitt representing management, Brenda Duran representing labor and John Beeman serving as the impartial member of Board. The terms of the members of the Board have expired.

Mr. Proffitt has expressed interest to serve another term. Unfortunately, Ms. Duran is unable to serve another term and Mr. Beeman has moved out-of-town. We hereby express our gratitude to Ms. Duran and Mr. Beeman for their service on the Board.

Staff is in the process of obtaining recommendations from the City's three collective bargaining units for the appointment of an individual to represent labor on the Board. Once the unions submit their recommendation, I will ask for your consideration to approve the appointment.

In accordance with the Labor Management Relations Ordinance, Mr. Proffitt and the member representing labor will need to submit their nomination for the third member of the Board.

At this time, I would ask for your approval to re-appoint Mr. Proffitt to the Labor Management Relations Board for another term. We appreciate Mr. Proffitt's dedication and commitment to serve on the Board.

Thank you for your consideration of this matter.

## **Discussion/Action Topic 11**

Appointment of Roger Morris to the  
Gallup Housing Board of Commissioners

Mayor Jackie McKinney

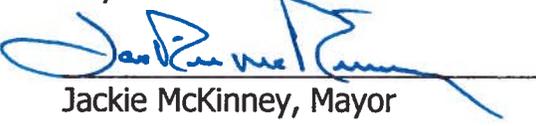


CITY OF GALLUP  
OFFICE OF THE MAYOR  
STATE OF NEW MEXICO

January 6, 2016

**MEMORANDUM**

TO: City Councilors

FROM:   
Jackie McKinney, Mayor

RE: Gallup Housing Authority Board of Commissioners

The City of Gallup and the Gallup Housing Authority suffered a great loss last October with the passing of Commissioner James Seay. Commissioner Seay was a vital member of the Gallup Housing Authority Board and will be deeply missed. As we recognize Commissioner Seay's dedication and service to the community, we would also like to express our condolences to his family.

In order for the Housing Authority Board to move forward, I would ask for your ratification to appoint Roger Morris to the Gallup Housing Authority Board of Commissioners. Mr. Morris is a reputable businessman in the community and will be an asset to the Housing Authority Board.

We appreciate Mr. Morris' desire, willingness and commitment to serve on the Board.

Thank you for your consideration of this request.

## **Discussion/Action Topic 12**

**Authority to Proceed with Legal Action to Foreclose the Lien on the  
Property Owned by B.E.I., Inc. (Doug Bishop) at 405 West Hill**

**George Kozeliski, City Attorney**



**CITY OF  
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: January 12, 2015

SUBJECT: Authority to proceed to file foreclosure action of lien on 405 W. Hill  
DEPT. OF ORIGIN: City Attorney  
DATE SUBMITTED: December 14, 2015  
SUBMITTED BY: George W. Kozeliski, City Attorney

**Summary:** Property is owned by B.E.I., Inc., (Doug Bishop). The City after months of trying to get Mr. Bishop to demolish the building; did so after it was condemned. The cost to the city was \$43,130.18.

**Fiscal Impact:** None, other than costs associated with legal action less than \$1,000.

Reviewed By: *Patty Holland*  
Finance Department

**Attachments:** Notice of Lien

**Legal Review:** Approved

Approved As To Form: *[Signature]*  
City Attorney

**Recommendation:** Council approve legal action to foreclose lien against property at 405 W. Hill owned by B.E.I., Inc. (Doug Bishop)

Approved for Submittal By:

*[Signature]*  
Department Director  
*[Signature]*  
City Manager

CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN

Resolution No. \_\_\_\_\_ Continued To: \_\_\_\_\_  
Ordinance No. \_\_\_\_\_ Referred To: \_\_\_\_\_  
Approved: \_\_\_\_\_ Denied: \_\_\_\_\_  
Other: \_\_\_\_\_ File: \_\_\_\_\_

**City of Gallup**  
110 West Aztec Avenue  
Gallup, New Mexico 87301



**Office of the City Attorney**  
George W. Kozeliski, Esq.  
**Phone** 505.863.1270  
**Email** attorney@GallupNM.gov

October 7, 2015

B.E.I., INC.  
P.O. Drawer 2290  
Gallup, NM 87305-2290

Re: Demolition of 405 W. Hill

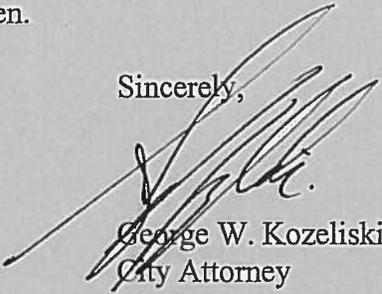
Dear Folks:

Please find enclosed a "Notice of Lien" which has been recorded in the office of the County Clerk of McKinley County on your property located at 405 W. Hill, Gallup, New Mexico. This lien has been recorded in accordance with provisions of State law. The total amount of the lien for the cost of the demolition of the structures and removal and disposal of the debris at 403 E. Hill is \$ 43,130.18.

The City of Gallup will allow you thirty (30) days to pay the amount due the City of Gallup for the demolition of the structures on the property, thereafter, the City will commence legal action to foreclose the lien in accordance with New Mexico law.

Thank you very much, and we hope that you will pay the amount due so that legal action can be avoided in foreclosing the lien.

Sincerely,



George W. Kozeliski  
City Attorney

GWK/tm

Enclosure

xc: Maryann Ustick, City Manager  
C.B. Strain, Planning & Zoning

**NOTICE OF LIEN**

**NOTICE IS HEREBY GIVEN** that the undersigned, **CITY OF GALLUP**, a New Mexico municipal corporation, claims a lien pursuant to §3-18-5 NMSA 1978 Comp. for the costs of the removal of one or more structures on property owned by B.E.I., INC., a New Mexico Corporation.

The property to be charged with the lien is in McKinley County, New Mexico, and is located at 405 W. Hill Ave., Gallup, New Mexico and being more particularly described as:

I

**Lot Seven (7), Eight (8), and Nine (9) in Block Fifty-Seven (57) of GALLUP TOWNSITE, Surveyed and platted by Alex Bowie, as the same are shown and designated on the map of said Townsite filed in the office of the then Probate Clerk and Ex-Officio Recorder of Bernalillo County, New Mexico on July 3, 1891, a copy of said map being now on file in the office of the County Clerk of McKinley County, New Mexico.**

II

The general purpose of the lien is for the costs incurred by the City of Gallup for asbestos abatement, demolition and removal of one or more structures and disposal of debris.

III

The total amount due is the sum of Forty Three Thousand Eighty and 18/100 (\$43,080.18) Dollars plus and additional Fifty and 00/100 (\$50.00) Dollars to cover the costs of recording fees with the McKinley County Clerk's Office for a total amount due of Forty Three Thousand One Hundred Thirty and 18/100 (\$43,130.18).

IV

The name of the property owner is B.E. I., INC., whose address is P.O. Drawer 2290, Gallup, New Mexico 87305-2290.

V

That such lien will be in effect from the date of filing of this Notice of Lien until the amount of the lien shall have been paid to the City of Gallup in full, or until said lien shall be foreclosed according to law.



DOCH 374045





Reg # 29147  
 Change Order to PO# 82338

Envirotech  
 5796 US Hwy 64  
 Farmington, NM 87401  
 Phone: 505-632-0615  
 Fax: 505-632-1865



To:  
 City of Gallup  
 Attention: Purchasing  
 PO Box 1270  
 Gallup, NM 87305-1270

**Invoice**

Invoice Number: 39163  
 Job: 00053-0015  
 DATE: September 17, 2015

405 W. Hill St, Gallup NM - Change order for utilities

Ordered by Francis Rodriguez  
 frodriguez@gallupnm.gov

Project Manager: Dan Kelley

| <u>Employee</u>                       | <u>Staff Type</u>  | <u>Description</u>        | <u>Units</u> | <u>Rate</u> | <u>Total</u>    |
|---------------------------------------|--------------------|---------------------------|--------------|-------------|-----------------|
| <b>08/31/2015</b>                     |                    |                           |              |             |                 |
| <b>Labor</b>                          |                    |                           |              |             |                 |
| Thomas Begay Jr                       | Equipment Operator | Spot utilities            | 8.50 Hrs     | 45.00       | 382.50          |
| Daniel Kelley                         | Superintendent     | Load trucks/excavate      | 8.50 Hrs     | 69.50       | 590.75          |
| <b>Labor Total:</b>                   |                    |                           | <b>17.00</b> |             | <b>973.25</b>   |
| <b>Equipment</b>                      |                    |                           |              |             |                 |
| (589) : Tilt Bed Trailer              |                    | D.Kelley-Load trucks      | 1.00 Day     | 50.00       | 50.00           |
| (804) : Skid Steer Loader             |                    | T.Begay-Load rocks        | 3.50 Hours   | 34.00       | 119.00          |
| (684) : Excavator                     |                    | D.Kelley-Load trucks      | 4.50 Hours   | 105.00      | 472.50          |
| (979) : Support Vehicle               |                    | D.Kelley-Load trucks      | 8.50 Hours   | 15.00       | 127.50          |
| <b>Equipment Total:</b>               |                    |                           | <b>17.50</b> |             | <b>769.00</b>   |
| <b>Material &amp; Supplies</b>        |                    |                           |              |             |                 |
|                                       |                    | Per Diem                  | 2.00 EA      | 95.00       | 190.00          |
| <b>Material &amp; Supplies Total:</b> |                    |                           | <b>2.00</b>  |             | <b>190.00</b>   |
| <b>08/31/2015 Total:</b>              |                    |                           | <b>36.50</b> |             | <b>1,932.25</b> |
| <b>09/01/2015</b>                     |                    |                           |              |             |                 |
| <b>Labor</b>                          |                    |                           |              |             |                 |
| Thomas Begay Jr                       | Equipment Operator | Spot for utility          | 10.50 Hrs    | 45.00       | 472.50          |
| Pamela Edwards                        | Administrator      | Project coordination      | 0.50 Hrs     | 55.00       | 27.50           |
| Daniel Kelley                         | Superintendent     | Dig utility line          | 10.50 Hrs    | 69.50       | 729.75          |
| <b>Labor Total:</b>                   |                    |                           | <b>21.50</b> |             | <b>1,229.75</b> |
| <b>Equipment</b>                      |                    |                           |              |             |                 |
| (589) : Tilt Bed Trailer              |                    | D.Kelley-Dig utility line | 1.00 Days    | 50.00       | 50.00           |
| (659) : Kenworth Truck                |                    | M.Hoyt-Haul soil          | 11.50 Hours  | 85.00       | 977.50          |

Invoice # 39163 Job # 00053-0015

| <u>Employee</u>                       | <u>Staff Type</u> | <u>Description</u>        | <u>Units</u> | <u>Rate</u> | <u>Total</u>    |
|---------------------------------------|-------------------|---------------------------|--------------|-------------|-----------------|
| (979) : Support Vehicle               |                   | D.Kelley-Dig utility line | 10.50 Hours  | 15.00       | 157.50          |
| <b>Equipment Total:</b>               |                   |                           | <b>23.00</b> |             | <b>1,185.00</b> |
| <b>Material &amp; Supplies</b>        |                   |                           |              |             |                 |
|                                       |                   | Per Diem                  | 2.00 EA      | 95.00       | 190.00          |
| <b>Material &amp; Supplies Total:</b> |                   |                           | <b>2.00</b>  |             | <b>190.00</b>   |
| <b>Subcontractor</b>                  |                   |                           |              |             |                 |
|                                       |                   | Dallago Corp.             | 1.00 Ea      | 2,831.88    | 2,831.88        |
| <b>Subcontractor Total:</b>           |                   |                           | <b>1.00</b>  |             | <b>2,831.88</b> |
| <b>9/1/2015 Total:</b>                |                   |                           | <b>47.50</b> |             | <b>5,436.63</b> |

**09/02/2015**

**Labor**

|                     |                    |                     |              |       |                 |
|---------------------|--------------------|---------------------|--------------|-------|-----------------|
| Thomas Begay Jr     | Equipment Operator | Load rocks/backfill | 11.50 Hrs    | 45.00 | 517.50          |
| Daniel Kelley       | Superintendent     | Dig utility line    | 11.50 Hrs    | 69.50 | 799.25          |
| <b>Labor Total:</b> |                    |                     | <b>23.00</b> |       | <b>1,316.75</b> |

**Equipment**

|                           |  |                           |              |       |               |
|---------------------------|--|---------------------------|--------------|-------|---------------|
| (589) : Tilt Bed Trailer  |  | D.Kelley-Dig utility line | 1.00 Days    | 50.00 | 50.00         |
| (604) : Skid Steer Loader |  | T.Begay-Load/backfill     | 11.50 Hours  | 34.00 | 391.00        |
| (979) : Support Vehicle   |  | D.Kelley-Dig utility line | 11.50 Hours  | 15.00 | 172.50        |
| <b>Equipment Total:</b>   |  |                           | <b>24.00</b> |       | <b>613.50</b> |

**Subcontractor**

|                             |  |                         |              |          |                 |
|-----------------------------|--|-------------------------|--------------|----------|-----------------|
|                             |  | Big Mikes - EQ rental   | 1.00 EA      | 918.92   | 918.92          |
|                             |  | Kachina Rentals-Hauling | 1.00 EA      | 1,548.90 | 1,548.90        |
| <b>Subcontractor Total:</b> |  |                         | <b>2.00</b>  |          | <b>2,467.82</b> |
| <b>09/02/2015 Total:</b>    |  |                         | <b>49.00</b> |          | <b>4,398.07</b> |

Invoice Sub-total 11,766.95  
 Sales Tax 978.13

Amount due this invoice **\$12,745.08**

**This may not be the final bill - If charges are received after this invoice has been mailed, you will receive a separate invoice for those costs.**

**TERMS: Net 30 Days from Invoice Date. Interest Charged at the Rate of 1.5% PER MONTH or 18% PER ANNUM on Accounts Not Paid Within 30 Days. PLEASE PAY FROM THIS INVOICE.**

Envirotech, Inc.  
 5796 HWY 64  
 Farmington, NM 87401  
 505-632-0615 Phone Number  
 505-632-1865 Fax Number



**Invoice**

39165

|   |
|---|
| <b>BILL TO:</b>   |
| City of Gallup<br>Attention: Purchasing<br>PO Box 1270<br>Gallup, NM 87305-1270 |

| Invoice #   | Date      | P.O. No. | Terms | Project    | Site Name                 |                           |           |
|---|-----------|----------|-------|------------|---------------------------|---------------------------|-----------|
| 39165   | 9/17/2015 |          | Net 0 | 00053-0014 | City of Gallup(5)405 W. H |                           |           |
| DESCRIPTION   |           |          | Qty   | UOM        | Rate                      | Amount                    | Retention |
| 405 W. Hill, Gallup NM - Demolition of residence.<br>Ordered by Francis Rodriguez. frodriguez@gallupnm.gov;<br>maustin@gallupnm.gov   |           |          | 1.00  | EA         | 25,505.00                 | 25,505.00                 | 0.00      |
| <b>Subtotal</b>   |           |          |       |            |                           | 25,505.00                 |           |
| <b>Retainage Held</b>   |           |          |       |            |                           | 0.00                      |           |
| <b>This may not be the final bill.</b>  |           |          |       |            |                           | 2,120.10                  |           |
| If charges are received after this invoice has been mailed,<br>you will receive a separate invoice for those costs.   |           |          |       |            |                           | <b>Total \$ 27,625.10</b> |           |
| <b>TERMS: Net 30 Days from Invoice Date. Interest Charged at the Rate of 1.5% PER MONTH or 18% PER ANNUM on Accounts Not Paid Within 30 days. PLEASE PAY FROM THIS INVOICE.</b> |           |          |       |            |                           |                           |           |
| Page 1 of 1   |           |          |       |            |                           |                           |           |

Envirotech, Inc.  
 5796 HWY 64  
 Farmington, NM 87401  
 505-632-0615 Phone Number  
 505-632-1865 Fax Number



# Invoice

39164

*com*

|   |
|---|
| <b>BILL TO:</b>   |
| City of Gallup<br>Attention: Purchasing<br>PO Box 1270<br>Gallup, NM 87305-1270 |

| Invoice #   | Date      | P.O. No. | Terms | Project    | Site Name                 |             |           |
|---|-----------|----------|-------|------------|---------------------------|-------------|-----------|
| 39164   | 9/17/2015 |          | Net 0 | 00053-0013 | City of Gallup(3)405 W. H |             |           |
| DESCRIPTION   |           |          | Qty   | UOM        | Rate                      | Amount      | Retention |
| 405 W. Hill, Gallup NM - Asbestos abatement. Ordered by Francis Rodriguez. frodriguez@gallupnm.gov; maustin@gallupnm.gov  |           |          | 1.00  | EA         | 2,502.02                  | 2,502.02    | 0.00      |
|   |           |          |       |            | <b>Subtotal</b>           | 2,502.02    |           |
|   |           |          |       |            | <b>Retainage Held</b>     | 0.00        |           |
| <b>This may not be the final bill.</b>  |           |          |       |            |                           | 207.98      |           |
| If charges are received after this invoice has been mailed, you will receive a separate invoice for those costs.  |           |          |       |            | <b>Total</b>              | \$ 2,710.00 |           |
| <b>TERMS: Net 30 Days from Invoice Date. Interest Charged at the Rate of 1.5% PER MONTH or 18% PER ANNUM on Accounts Not Paid Within 30 days. PLEASE PAY FROM THIS INVOICE.</b> |           |          |       |            |                           |             |           |

## **Discussion/Action Topic 13**

Ordinance No. C2016-1;  
An Ordinance Amending the Makeup of the Board Members  
on the Sustainable Gallup Board

George Kozeliski, City Attorney



**CITY OF  
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: January 12, 2016

SUBJECT: Ordinance Amending the Membership Makeup of the Sustainable Gallup Board  
DEPT. OF ORIGIN: City Attorney's Office  
DATE SUBMITTED: January 4, 2016  
SUBMITTED BY: George W. Kozeliski, City Attorney

**Summary:**

A recommendation has been made for all members of the Sustainable Gallup Board to be at-large members, residents of Gallup, and for the Conservation Officer of the City of Gallup to be an Ex-officio (non-voting) member.

**Fiscal Impact:**

None.

Reviewed By: \_\_\_\_\_

*Patty Holland*  
Finance Department

**Attachments:** Ordinance No. C2016-1; An Ordinance Amending the Makeup of the Board Members on the Sustainable Gallup Board.

**Legal Review:**

Approved As To Form: \_\_\_\_\_

*[Signature]*  
City Attorney

**Recommendation:** Adopt Ordinance No. C2016-1.

Approved for Submittal By: \_\_\_\_\_

*[Signature]*  
Department Director

*[Signature]* Acting CM  
City Manager

CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN

Resolution No. \_\_\_\_\_ Continued To: \_\_\_\_\_  
Ordinance No. \_\_\_\_\_ Referred To: \_\_\_\_\_  
Approved: \_\_\_\_\_ Denied: \_\_\_\_\_  
Other: \_\_\_\_\_ File: \_\_\_\_\_

**ORDINANCE NO. C2016-1**

**AN ORDINANCE AMENDING THE MAKEUP OF THE BOARD MEMBERS ON THE “SUSTAINABLE GALLUP BOARD”:**

**WHEREAS:** It is determined that it would be best if all members of the “Sustainable Gallup Board” be at-large members, residents of Gallup, and the conservation coordinator of the city of Gallup should be an Ex officio (non-voting member).

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP THAT:**

Section 1. Section 2-1-3B of the Gallup Municipal Code is amended to read as follows:

2-1-3: Bylaws of the Board:

B. Membership:

1. Board Members:

a. The board shall consist of up to seven (7) members appointed by the mayor, with city council approval, and will strive to represent the diverse cultural, political and social interests of Gallup and the surrounding communities.

b. At large members (voting members) - up to seven (7):

(1) Up to seven (7) members who are residents of the city of Gallup.

c. Ex officio members (non-voting) - up to three (3):

(1) One or more representatives from the city of Gallup including the conservation coordinator, or similar representative from the water, solid waste and electric departments as may be appropriate from time to time.

(2) One member from NWNMCOG.

Section 2. All other provisions of the “Sustainable Gallup Board” ordinance shall remain unchanged and in full force and effect.

Section 3. This ordinance shall become effective after its passage and publication by title and summary as provided by law.

**PASSED, ADOPTED AND APPROVED THIS 12<sup>TH</sup> DAY OF JANUARY, 2016.**

CITY OF GALLUP, NEW MEXICO

BY: \_\_\_\_\_  
Jackie D. McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Alfred Abeita, City Clerk

**AN ORDINANCE AMENDING THE MAKEUP OF THE BOARD MEMBERS ON THE “SUSTAINABLE GALLUP BOARD”:**

**WHEREAS:** It is determined that it would be best if all members of the “Sustainable Gallup Board” be at- large members, residents of Gallup, and the conservation coordinator of the city of Gallup should be an Ex officio (non-voting member).

**NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP THAT:**

**2-1-3: Bylaws of the Board: (ARE AMENDED TO READ AS FOLLOWS)**

**B. Membership:**

**1. Board Members:**

a. The board shall consist of up to seven (7) members appointed by the mayor, with city council approval, and will strive to represent the diverse cultural, political and social interests of Gallup and the surrounding communities.

b. At large members (voting members) - up to seven (7):

(1) Up to ~~six (6)~~ seven (7) members who are residents of the city of Gallup.

~~(2) The conservation coordinator of the city of Gallup, or similar representative from the city of Gallup utility departments.~~

c. Ex officio members (nonvoting) - up to three (3):

(1) One or more representatives from the city of Gallup including the conservation coordinator, or similar representative from the water, solid waste and electric departments as may be appropriate from time to time.

(2) One member from NWNMCOG.

All other provisions of the “Sustainable Gallup Board” ordinance shall remain unchanged and it full force and effect.

This ordinance shall become effective after its passage and publication by title and summary as provided by law.

**PASSED, ADOPTED AND APPROVED THIS \_\_\_ DAY OF FEBRUARY, 2016.**

**CITY OF GALLUP**

**BY: \_\_\_\_\_  
Jackie D. McKinney, Mayor**

**ATTEST:**

**\_\_\_\_\_  
Alfred Abeita, City Clerk**

## **Discussion/Action Topic 14**

Award of Contract for Golf Course Irrigation Improvements

Vince Tovar, Gallup Water and Sanitation Director



**CITY OF  
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: January 12, 2016

SUBJECT: Bid No. 1520: Fox Run Golf Course Irrigation Project  
DEPT. OF ORIGIN: Water & Sanitation  
DATE SUBMITTED: January 8, 2016  
SUBMITTED BY: Vincent R. Tovar, Director of Water and Sanitation

**Summary:** On January 7, 2016, Formal Bid No. 1520 – Fox Run Golf Course Irrigation Project, bids were received and opened at 2:00 PM. Five (5) bids were received. Of the Bids that were received, all were deemed responsive. The low bidder is Mid-America Golf & Landscape, Inc., of St. Lee's Summit, MO in the amount of \$2,980,381.24.

**Fiscal Impact:**

There is sufficient funding to award this project.

*environmental fund 202*

Reviewed By: \_\_\_\_\_

*Patty Holland*  
Finance Department

**Attachments:** Purchasing Department – Tabulation Sheet(s). BID No. 1520: Fox Run Golf Course Irrigation Project.

**Legal Review:**

Approved As To Form: \_\_\_\_\_

*[Signature]*  
City Attorney

**Recommendation:** Staff recommends approval to award Formal Bid No. 1520 – Fox Run Golf Course Irrigation Project Mid-America Golf & Landscape, Inc., of St. Lee's Summit, MO in the amount of \$2,980,381.24.

Approved for Submittal By:

*Vincent R. Tovar*  
Department Director

*[Signature]* Acting CM  
City Manager

CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN

Resolution No. \_\_\_\_\_ Continued To: \_\_\_\_\_  
Ordinance No. \_\_\_\_\_ Referred To: \_\_\_\_\_  
Approved: \_\_\_\_\_ Denied: \_\_\_\_\_  
Other: \_\_\_\_\_ File: \_\_\_\_\_

**CITY OF GALLUP  
PURCHASING DEPARTMENT -- TABULATION SHEET(S)**

BID NO. 1520      BID ON: Fox Run Golf Course Irrigation Project  
 Open Date: January 7, 2015 at 2:00 P.M. (Local)

| Item No. | Items and Descriptions                  | Quantity | Mid-America Golf & Landscape, Inc | Duininck, Inc.      | Smithco Construction | RMCi, Inc.          | Murphy Builders, Inc. |
|----------|---|----------|-----------------------------------|---------------------|----------------------|---------------------|-----------------------|
|          | BASE BID (Excluding taxes)              |          | 2,751,650.31                      | 3,153,197.15        | 2,970,638.50         | 3,089,218.40        | 3,399,554.41          |
|          | NMGRT (8.3125%)                         |          | 228,730.93                        | 262,109.51          | 246,934.33           | 256,791.28          | 282,587.96            |
|          | <b>TOTAL BASE BID (Including taxes)</b> |          | <b>2,980,381.24</b>               | <b>3,415,306.66</b> | <b>3,217,572.83</b>  | <b>3,346,009.68</b> | <b>3,682,142.37</b>   |
|          |   |          |                                   |                     |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          | NM RESIDENT CERTIFICATE                 |          | No                                | No                  | Yes                  | Yes                 | Yes                   |
|          | NM VETERANS' RESIDENT CERTIFICATE       |          | No                                | No                  | No                   | No                  | No                    |
|          | BASE BID TOTAL W/PREFERENCE             |          | N/A                               | N/A                 | 2,822,106.58         | 2,934,757.48        | 3,229,576.69          |
|          |   |          | 2,751,650.31                      | 3,153,197.15        |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          |   |          |                                   |                     |                      |                     |                       |
|          | <b>BID BOND:</b>                        |          | Yes                               | Yes                 | Yes                  | Yes                 | Yes                   |
|          | <b>SUBCONTRACTOR LISTING</b>            |          | Yes                               | Yes                 | Yes                  | Yes                 | Yes                   |
|          | <b>ACKNOWLEDGEMENT OF AMENDMENTS</b>    |          | Yes                               | Yes                 | Yes                  | Yes                 | Yes                   |

## **Discussion/Action Topic 15**

Resolution No. R2016-1;  
Annual Determination of Notice Under the Open Meetings Act

Alfred Abeita, City Clerk



**CITY OF  
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: January 12, 2016

SUBJECT: Annual Determination of Notice Under the Open Meetings Act  
DEPT. OF ORIGIN: City Clerk  
DATE SUBMITTED: December 14, 2015  
SUBMITTED BY: Alfred Abeita II, City Clerk

**Summary:**

The New Mexico Open Meetings Act requires all public bodies to determine, at least annually, what constitutes reasonable notice to the public of its meetings. While the Open Meetings Act itself does not impose any specific requirements, other than a written Agenda being available seventy-two (72) hours in advance of each meeting, the New Mexico Attorney General will consider the following notice procedure as reasonable: 1) ten days advance notice for regular meetings, 2) three days advance notice for special meetings, and 3) twenty-four hours advance notice for emergency meetings. The attached Resolution incorporates the requirements of the Open Meetings Act and the recommendations of the Attorney General. Furthermore, the Resolution is considered sufficient and reasonable notice of the regular meetings of the City Council to be held at 6:00 p.m. on the second and fourth Tuesdays of each month.

**Fiscal Impact:**

None.

Reviewed By: \_\_\_\_\_

*Paul Holland*  
Finance Department

**Attachments:** Resolution No. R2016-1, Annual Determination of Notice Under the Open Meetings Act.

**Legal Review:**

Approved As To Form: \_\_\_\_\_

*Steve [Signature]*  
City Attorney

**Recommendation:**

Staff recommends approval of Resolution No. R2016-1 to comply with the New Mexico Open Meetings Act.

Approved for Submittal By:

*Alfred Abeita II*  
Department Director

*[Signature]*  
City Manager

CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN

|                      |                     |
|----------------------|---------------------|
| Resolution No. _____ | Continued To: _____ |
| Ordinance No. _____  | Referred To: _____  |
| Approved: _____      | Denied: _____       |
| Other: _____         | File: _____         |

## **RESOLUTION NO. R2016-1**

### **ANNUAL DETERMINATION OF NOTICE UNDER THE OPEN MEETINGS ACT**

**WHEREAS**, Section 10-15-1 et. seq. NMSA 1978 requires at least an annual determination in a public meeting of reasonable notice for public meetings; and

**WHEREAS**, Section 1-6-6 (C) of the Gallup Municipal Code and this Resolution No. R2016-1 are deemed sufficient and reasonable notice of the regular meetings of the governing body of the City of Gallup on the second (2<sup>nd</sup>) and fourth (4<sup>th</sup>) Tuesday of each month at the Council of Chambers of Gallup City Hall, Second Street and Aztec Avenue; Gallup, New Mexico; and

**WHEREAS**, Section 10-5-1 et. seq. of the Open Meetings Act (NMSA 1978) states that, except as may be otherwise provided in the Constitution or the provisions of the Open Meetings Act, all meetings of a quorum of members of any board, council, commission, administrative adjudicatory body or other policymaking body of any state or local public agency held for the purpose of formulating public policy, discussing public business or for the purpose of taking any action within the authority of or the delegated authority of such body, are declared to be public meetings open to the public at all times; and

**WHEREAS**, any meetings subject to the Open Meetings Act at which the discussion or adoption of any proposed resolution, rule, regulation or formal action occurs shall be held only after reasonable notice to the public; and

**WHEREAS**, Section 10-15-1 et. seq. of the Open Meetings Act requires the City Council to determine annually what constitutes reasonable notice of its public meetings.

**NOW THEREFORE, BE IT RESOLVED** by the governing body of the City of Gallup, New Mexico, that:

1) All meetings shall be held at the Council Chambers of Gallup City Hall, Second Street and Aztec Avenue; Gallup, New Mexico or as indicated in the meeting notice.

2) Unless otherwise specified, regular meetings shall be held on the second (2<sup>nd</sup>) and fourth (4<sup>th</sup>) Tuesdays of each month and will begin at 6:00 p.m. The agenda will be available at least seventy-two (72) hours prior to the meeting from the City Clerk, whose office is located at Gallup City Hall, Second Street and Aztec Avenue; Gallup, New Mexico. The agenda will be posted on the bulletin board at the entrance to Gallup City Hall and the bulletin board at the Office of the City Clerk. The agenda will also be posted on the City of Gallup's website at [www.GallupNM.gov](http://www.GallupNM.gov).

3) Special meetings may be called by the Mayor or two (2) members of the governing body upon three (3) days notice. The notice shall include an agenda for the

meeting or information on how members of the public may obtain a copy of the agenda. The agenda will be available to the public at least seventy-two (72) hours before the meeting and posted on the City of Gallup's website at [www.GallupNM.gov](http://www.GallupNM.gov).

4) Emergency meetings will be called only under unforeseen circumstances that demand immediate action to protect the health, safety and property of citizens or to protect the public body from substantial financial loss. The City Council will avoid emergency meetings whenever possible. Emergency meetings may be called by the Mayor or by two (2) members of the governing body upon twenty-four (24) hours prior notice, unless threat of personal injury or property damage requires less notice. The notice for all emergency meetings shall include an agenda for the meeting or information on how the public may obtain a copy of the agenda. Within ten (10) days of taking action on an emergency matter, the City Council will notify the New Mexico Attorney General's Office.

5) For the purposes of regular meetings described in paragraph 2 of this Resolution, notice requirements are met by posting of the notice of the date, time, place, and the agenda on the bulletin board at the entrance to Gallup City Hall and the bulletin board at the Office of the City Clerk. The City Clerk shall also mail copies of the written notice to those broadcast stations licensed by the Federal Communications Commission (FCC) and newspapers of general circulation that made a written request for notice of public meetings.

6) For the purposes of special meetings and emergency meetings described in paragraphs 3 and 4 of this Resolution, notice requirements shall be met by posting notice of the date, time, place and the agenda on the bulletin board at the entrance to Gallup City Hall and the bulletin board at the Office of the City Clerk. The City Clerk shall also provide notice by telephone or E-mail to those broadcast stations licensed by the FCC and newspapers of general circulation that have made a written request for notice of public meetings.

7) In addition to the information specified above, all notices shall include the following language:

Auxiliary aides for the disabled are available upon request. Please contact the City Clerk at (505) 863-1254 at least one (1) week prior to the meeting or as soon as possible in advance of the meeting to make any necessary arrangements.

8) The City Council may close a meeting to the public only if the subject matter of such discussion or action is excepted from the open meetings requirement under Section 10-15-1 (H) of the Open Meetings Act.

a) If any meeting is closed during an open meeting, such closure shall be approved by a majority vote of a quorum of the City Council taken during the open meeting. The authority for the closed meeting and the subjects to be discussed shall be

stated with reasonable specificity in the motion to close and the vote of each individual member on the motion to close shall be recorded in the minutes. Only those subjects specified in the motion may be discussed in a closed meeting.

b) If a closed meeting is conducted when the City Council is not in an open meeting, the closed meeting shall not be held until public notice, appropriate under the circumstances, stating the specific provision of law authorizing the closed meeting and the subjects to be discussed with reasonable specificity, is given to the members and to the general public.

c) Following the completion of any closed meeting, the minutes of the open meeting that was closed, or the minutes of the next open meeting if the closed meeting was separately scheduled, shall state whether the matters discussed in the closed meeting were limited only to those specified in the motion or notice for closure.

d) Except as provided in Section 10-15-1(H) of the Open Meetings Act, any action taken as a result of discussions in a closed meeting shall be made by vote of the City Council in an open public meeting.

9) Nothing in this Resolution shall alter any legal requirement for greater or different notice of any specific public hearing.

**PASSED, ADOPTED AND APPROVED** this 12<sup>th</sup> day of January, 2016.

CITY OF GALLUP, NEW MEXICO

By: \_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Alfred Abeita II, City Clerk

## **Discussion/Action Topic 16**

### **Public Hearing:**

Proposed Issuance of a Restaurant (Beer and Wine) License to  
G & W Industries, Inc. d/b/a Smokey's, 505 North Highway 491

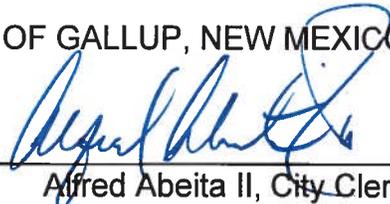
George Kozeliski, City Attorney

## LEGAL NOTICE

**PUBLIC NOTICE IS HEREBY GIVEN** that at 6:00 P.M. on Tuesday, January 12, 2016 in the Council Chambers of Gallup City Hall, 110 West Aztec Avenue; Gallup, New Mexico, the Governing Body of the City of Gallup will hold a Public Hearing on the proposed issuance of a Restaurant (Beer & Wine) License to G & W Industries, Inc. d/b/a Smokey's, 505 North Highway 491; Gallup, New Mexico.

The Director of the Alcohol and Gaming Division has granted preliminary approval for this Application.

CITY OF GALLUP, NEW MEXICO

By: 

Alfred Abeita II, City Clerk

PUBLISH:

Friday, December 11, 2015

Friday, December 18, 2015



New Mexico Regulation and Licensing Department  
ALCOHOL AND GAMING DIVISION

Toney Anaya Building ▪ 2550 Cerrillos Road ▪ Santa Fe, New Mexico 87505  
P.O. Box 25101 ▪ Santa Fe, New Mexico 87505-5101  
(505) 476-4875 ▪ Fax (505) 476-4595 ▪ [www.rld.state.nm.us/alcoholandgaming](http://www.rld.state.nm.us/alcoholandgaming)

December 4, 2015

Susana Martinez  
GOVERNOR

Robert "Mike" Unthank  
SUPERINTENDENT

David Jablonski  
DEPUTY  
SUPERINTENDENT

Claudia Armijo  
CHIEF GENERAL  
COUNSEL

Mary Kay Root  
DIRECTOR

Certified Mail No.: 9171 9690 0935 0078 6758 86

City of Gallup  
Attn: Alfred Abieta, Clerk  
P.O. Box 1270  
Gallup, NM 87305

Received  
12/7/15  
AA

Re: Lic. No. /Appl. No.: Application No. 973955  
Name of Applicant: G&W Industries, Inc.  
Doing Business As: Smokey's  
Proposed Location: 505 N. Hwy 491  
Gallup, New Mexico 87301

**ATTENTION: Department or person responsible for conducting or preparing the public hearing for liquor license transfers or issuance of new liquor licenses.**

Greetings:

The Director of the Alcohol and Gaming Division has reviewed the referenced Application and granted **Preliminary Approval**; it is being forwarded to you in accordance with Section 60-6B-4 NMSA of the Liquor Control Act.

While the law states that "within forty-five (45) days after receipt of a Notice from the Alcohol and Gaming Division, the governing body **shall** hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the inherent conflict between the new 30 day notice and the existing 45 day hearing requirement. Extensions to the 45-day hearing requirement will be granted when necessary to allow for compliance with the 30 day notice. Notice of the Public Hearing required by the Liquor Control Act **shall** be given by the governing body by publishing a notice of the date, time, and place of the hearing twice during the 30 days prior to the hearing in a newspaper of general circulation within the territorial limits of the governing body **The first notice must be published at least thirty (30) days before the hearing. Both publications must occur before a hearing can be conducted.** The notice shall include: (A) Name and address of the Applicant/Licensee; (B) The action proposed to be taken by the Alcohol and Gaming Division; and (C) The location of the licensed premises. The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. A record **shall** be made of the hearing.

**THE APPLICANT IS SEEKING A RESTAURANT BEER AND WINE LICENSE WITH ON PREMISE CONSUMPTION ONLY WITH A PATIO.**

Alcohol and Gaming Division  
(505) 476-4875

Boards and Commissions Division  
(505) 476-4600

Construction Industries Division  
(505) 476-4700

Financial Institutions Division  
(505) 476-4885

Manufactured Housing Division  
(505) 476-4770

Securities Division  
(505) 476-4580

Administrative Services Division  
(505) 476-4800

The governing body may disapprove the issuance or transfer of the license if:

- 1) The proposed location is within an area where the sale of alcoholic beverages is prohibited by the laws of New Mexico. (The governing body may disapprove if the proposed location is within 300 feet of a church or school unless the license has been located at this location prior to 1981 or unless the Applicant/Licensee has obtained a waiver from the Local Option District governing body for the proposed licensed premises).
- 2) The issuance or transfer would be in violation of a zoning or other ordinance of the governing body. The governing body may disapprove if the proposed location is not properly zoned. Because this office is in receipt of a Zoning Statement from the governing body, this is not a basis for disapproval.
- 3) The issuance would be detrimental to the public health, safety, or morals of the residents of the Local Option District. Disapproval by the governing body on public health, safety, or morals must be based on and supported by substantial evidence pertaining to the specific prospective transferee or location and a copy of the record must be submitted to the Alcohol and Gaming Division.

Within thirty **(30)** days after the Public Hearing, the governing body **shall** notify the Alcohol and Gaming Division as to whether the local governing body has approved or disapproved the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notice of publication(s). **If the governing body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may give Final Approval to the issuance or transfer of the license.**

If the governing body disapproves the issuance or transfer of the license, it shall notify the Alcohol and Gaming Division within thirty **(30)** days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to the Alcohol and Gaming Division with the notice of disapproval (Page 1 of the Application page noting disapproval).

Sincerely,



Rose L. Garcia  
Hearing Officer  
NM Regulation & Licensing Dept.  
Alcohol & Gaming Division  
Phone: 505-476-4552  
Fax: 505-476-4595  
Email: [rosel.garcia@state.nm.us](mailto:rosel.garcia@state.nm.us)

Enclosures:

1. Original Page 1 of the Application **(must be signed and returned)**.
2. Copy of Page 2 of the Application



PO Box 25101 • Santa Fe, New Mexico 87505-5101 • (505) 476-4875 • Fax (505) 476-4595 • www.rfd.state.nm.us/alcoholandgaming

Page 1  
Rev. 08/13

9/11/15  
ENTERED  
200  
1-757033  
12/11/15  
ENTERED  
1050  
1-779625

9/11/15  
ROD

### LIQUOR LICENSE APPLICATION

Application fee - \$200.00 Fees are non-refundable.

State Liquor License # \_\_\_\_\_  
 Application Number 773955  
 Local option (AGID use) \_\_\_\_\_

Application is for: Change of Stock \_\_\_\_\_ Change of Officers/Directors \_\_\_\_\_  
 Issue New License  Type of License being applied for beer/wine

Applicant is: Individual \_\_\_\_\_ Corporation  Partnership (General or Limited) \_\_\_\_\_ Limited Liability Company \_\_\_\_\_

NAME OF APPLICANT (company or individual) GTW INDUSTRIES, INC.  
 ADDRESS (including city, state, zip) 505 N. Hwy 491  
Gallup, NM 87301

D/B/A name to be used: SMOKEY'S RESTAURANT Phone number for licensed premises: 505-742-2023

Physical location where license is to be used: 505 N. Hwy 491 - GALLUP, NM 87301  
 (Include street number / highway number / state road, city and county, state, and zip code)

Mailing address: 505 N. Hwy 491 - GALLUP, NM 87301

Are alcoholic beverages currently being dispensed at the proposed location? Yes \_\_\_\_\_ No  If yes, give license number and type \_\_\_\_\_

I, (print name) CHARLES G. McDARIGH, as (title) SECRETARY, being first duly sworn upon oath  
 deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that  
 if any statements or representations herein are found to be false, the director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form in the presence of a notary public.

Signature of Applicant: [Signature] Date: 8-21-15

SUBSCRIBED AND SWORN TO before me this 21st day of August, 2015 by \_\_\_\_\_  
 Notary Public: Hanko Curawee My Commission Expires August 12, 2019

Local Governing Body of: \_\_\_\_\_ (City or County). Hearing held on \_\_\_\_\_ 20\_\_\_\_

Check one: Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ City/County Official \_\_\_\_\_ (Signature & Title)

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Director Approval \_\_\_\_\_ Date \_\_\_\_\_

ALCOHOL & GAMING DIVISION

RECEIVED  
SEP 16 2015

TELEPHONE NUMBER  
505-722-2023

For Alcohol and Gaming Division Use Only



**PREMISES LOCATION, OWNERSHIP, AND DESCRIPTION**  
SS-60-6B-10

1. The land and building which is proposed to be the licensed premises is (check one):

Owned by Applicant \_\_\_\_\_ Leased by Applicant (attach copy of deed or lease)  Other (provide details) \_\_\_\_\_

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s) GALLUP RIO WEST, LLC

B. Date and term of lease 4/3/15 12 YRS.

3. Premises location is zoned (example C-1) C-3B

If the premises is zoned, attach zoning statement from local government giving location address and type of zone, stating whether alcoholic beverages are allowed at proposed location. If there is no zoning, attach confirmation from local government indicating there is no zoning.

4. Distance from nearest church \*(Property line of church to licensed premises—shortest distance).

Miles/feet 4/4 FT Name of church SAIN T PAUL Address/location of church 1121 W. LINCOLN AVE., GALLUP, NM 87301

5. Distance from nearest school \*(Property line of school to licensed premises—shortest distance).

Miles/feet .64 MILES Name of school WASHINGTON ELEMENTARY Address/location of school 700 W WILSON AVE, GALLUP, NM 87301

6. Distance from military installation \*(Property line of military installation to licensed premises—shortest distance.)

Miles 147.3 MILES Name of Military Installation, circle one: Kirtland Air Force Base (Albuquerque), White Sands Missile Range (Las Cruces), Holloman Air Force Base (Alamogordo), Cannon Air Force Base (Clovis).

7. Attach, on a separate sheet, the detailed floor plan for each level (floor) where alcoholic beverages will be sold or consumed. Show exterior walls, doors, and interior walls. This will be the licensed premises. The floor plan should be no larger than 8 1/2 x 11 inches, and must include the total square footage of premises.

\*If the distance is beyond 300 feet, but less than 400 feet, a registered engineer or licensed surveyor must complete a Survey Certificate showing the exact distance.

8. Type of Operation:

Lounge \_\_\_\_\_ Restaurant  Package Grocery \_\_\_\_\_ Racetrack \_\_\_\_\_ Hotel \_\_\_\_\_ Other (specify) \_\_\_\_\_

RECEIVED  
SEP 6 2015  
ALCOHOL & GAMING DIVISION



Mayor Jackie McKinney  
Councilor Linda Garcia, District 1  
Councilor Allan Landavazo, District 2  
Councilor Yogash Kumar, District 3  
Councilor Fran Palochak, District 4

Maryann Ustick, City Manager  
George W. Kozeliski, City Attorney

July 8, 2015

Ms. Mary Kay Root, Director  
State of New Mexico  
Alcohol and Gaming Division  
2550 Cerrillos Road  
Santa Fe, NM 87505

Ref: Zoning Certificate – Smokey’s Roadhouse, 505 N. Hwy. 491, Gallup, NM.

Ms. Root,

I am writing as a follow up to your request for zoning verification of the Smokey’s Roadhouse Restaurant located at 505 North Hwy 491, Gallup, NM. The property as shown on the current City of Gallup zoning atlas lies within the Heavy Commercial (C-3B) zoning district. Alcohol sales as an accessory use to hotels, motels and restaurants is a permitted use within the (C-3B) zoning district per Section 10-4B-2B of the City of Gallup Land Development Standards (LDS).

If any additional information is needed please feel free to contact me at (505) 726-2611.

Sincerely,

Clyde “C.B.” Strain  
Community Planner  
Planning Department  
Economic Development Division

RECEIVED

SEP 16 2015

ALCOHOL & GAMING DIVISION

Copy to: zoning certification file.