

AGENDA

GALLUP CITY COUNCIL REGULAR MEETING TUESDAY, FEBRUARY 9, 2016; 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

A. Pledge of Allegiance

B. Roll Call

C. Approval of Minutes

Special and Regular Meeting of January 26, 2016

D. Discussion/Action Topics

1. Resolution No. R2016-11; A Resolution Naming the Playground and Park for the Patton, South Fork, Red Hills and Rocky View Neighborhoods – Alfred Abeita, City Clerk
2. Resolution No. R2016-12; Acceptance of Legislative Appropriation 15-0806 for the Oliva Park at Basilio Drive Construction Project – Stan Henderson, Public Works Director
3. Resolution No. R2016-13; Acceptance of Legislative Appropriation 15-0807 for the Oliva Park at Basilio Drive Construction Project – Stan Henderson, Public Works Director
4. Resolution No. R2016-14; Acceptance of Legislative Appropriation 15-1134 for New Skate Board Park Construction Project – Stan Henderson, Public Works Director

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Discussion/Action Topics, continued

5. Approval and Acceptance of the Local Liquor Excise Tax Accountability Report for 4th Quarter Calendar Year 2015 – Debra Martinez, McKinley County DWI Director
6. Appointments to the Gallup Sports and Youth Commission – Mayor Jackie McKinney
7. Acceptance of an Easement from Dorian Collins for Reach 27.6, Project #6 of the Navajo Gallup Water Supply Project – Vince Tovar, Director, Gallup Water and Sanitation Department
8. Approval of Easement Agreement with Dallago Corporation and Acceptance of an Easement from Dallago Corporation for Reach 27.6, Project #6 of the Navajo Gallup Water Supply Project – Vince Tovar, Director, Gallup Water and Sanitation Department
9. Resolution No. R2016-15; Approving Submission of a Bureau of Reclamation Grant Application for the Gallup/NGWSP “Water Commons” Drought Contingency Plan – Vince Tovar, Director, Gallup Water and Sanitation Department
10. Budget Adjustment for Professional and Legal Services for the G-22 Water Rights Acquisition – Vince Tovar, Director, Gallup Water and Sanitation Department
11. Resolution R2016-16; A Resolution Approving the Growth Management Master Plan 2016 Update for the City of Gallup – Clyde (C.B.) Strain, Planning Director and Steve Burstein, Architectural Research Consultants, Inc.

E. Comments by Public on Non-Agenda Items

F. Comments by Mayor and City Councilors

G. Comments by City Manager and City Attorney

H. Motion to Adjourn

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.

Minutes

Special and Regular Meeting of January 26, 2016

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, January 26, 2016.

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 George Kozeliski, City Attorney

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

1. Growth Management Master Plan Update – Clyde (C.B.) Strain, Planning Director

Ms. Ustick said the Growth Management Master Plan (GMMP) is required to be updated to be in compliance with State requirements. With the assistance of the Northwest New Mexico Council of Governments, the City obtained a State grant in the amount of \$50,000 for the update. Although the completion of the update was due in December 2015, the State authorized a 90-day extension for the completion of the update as well as a renewal process by various State agencies. She commended the Steering Committee and the Planning and Zoning Commission for their time and contributions made in preparing the update.

Mr. Strain said the Planning and Zoning Commission conducted an extensive review of the GMMP Update and sends a favorable recommendation to the Mayor and Councilors. The update will be presented to the Mayor and Councilors for final adoption of the plan on February 9, 2016.

Mr. Strain introduced Steve Burstein of Architectural Research Consultants, Inc. who provided a power point presentation of the GMMP Update. A copy of the power point presentation is attached hereto and made a part of these official Minutes. Mr. Burstein answered questions regarding employment data, priorities for annexation, the possible expansion of weatherization assistance programs, and a proposal from the 2009 Plan regarding a public referendum on an indoor arena.

Discussion followed concerning the need to update the Parks and Recreation Master Plan from 2004 and additional improvements for enhancing the Sports Complex.

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Mr. Burstein asked the Mayor and Councilors to contract Mr. Strain if they have any changes or recommendations to the GMMP Update.

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

Jackie McKinney, Mayor

ATTEST:

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, January 26, 2016.

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 George Kozeliski, City Attorney

Presented to the Mayor and Councilors were the Minutes of the Special and Regular Meetings of January 12, 2016.

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

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

1. Ordinance No. S2016-1; An Ordinance Authorizing the Execution and Delivery of a Water Project Fund Loan/Grant Agreement By and Between the New Mexico Finance Authority and the City of Gallup – Vince Tovar, Director, Gallup Water and Sanitation Director

Mr. Tovar said staff is requesting authorization to proceed with the closing documents for Water Trust Board (WTB) Loan/Grant Funding No. 334 in the amount of \$4,295,167. 40% of the awarded amount is for the loan component of the agreement in the amount of \$1,718,067. 60% of the awarded amount is for the grant component of the agreement in the amount of \$2,577,100. The proceeds from the Water Project Fund Loan/Grant Agreement will provide funding for the planning, design and construction of Reach 27.7a and 27.13 of the Navajo Gallup Water Supply Project (NGWSP). With the use of an overhead map, Mr. Tovar provided an overview of the work to be done for both reaches of the project.

Discussion followed concerning the possibility of property owners being able to tap into the Sacred Heart water line, the improvements planned for the water tank at Red Rock Park, and the discussions with the Bureau of Reclamation concerning the City's request to cap its costs for the NGWSP.

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Councilor Landavazo made the motion to adopt Ordinance S2016-1. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Kumar, Garcia, and Mayor McKinney all voted yes.

2. Approval to Convert Existing Part-Time Judicial Aide to Full-Time Status at Municipal Court – Klo Abeita, Human Resources Director

Ms. Abeita said the workload at Municipal Court has significantly increased during the past two years due to more court filings and citations being processed. There have also been new policies implemented for the timely collection of fees, fines and assessments. Based on the increased work load, Ms. Abeita recommended converting an existing part-time Judicial Aide to full-time status. The additional fiscal impact will be \$10,624.27 for the remainder of the fiscal year. The source of funds to be used for the additional impact will be covered by increased Municipal Court revenues.

Mayor McKinney commended Municipal Judge Grant Foutz and his staff for their work in collecting the outstanding fees that are owed to the City.

Councilor Garcia made the motion to approve the conversion of an existing part-time Judicial Aide to full-time status at Municipal Court. Seconded by Councilor Kumar. Roll call: Councilors Garcia, Kumar, Landavazo, Palochak, and Mayor McKinney all voted yes.

3. Approval of Intergovernmental Project Participation Agreement and Security Agreement with the New Mexico Economic Development Department for El Morro Theater – Rick Snider, General Services Director

Mr. Snider said the proposed participation agreement will provide \$100,000 to the City for various projects at El Morro Theater, including the creation of two part-time positions. The funds are restricted for use at the historic theater and cannot be used for the Events Center. Mr. Snider also recommended utilizing the funds for decorative curtains and LED aisle lighting in the theater. The recommended improvements should be completed within a couple of months.

Councilor Landavazo made the motion to approve the Intergovernmental Project Participation Agreement and Security Agreement with the New Mexico Economic Development Department for El Morro Theater. Seconded by Councilor Garcia. Roll call: Councilor Landavazo, Garcia, Palochak, Kumar, and Mayor McKinney all voted yes.

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4. Resolution No. R2016-10; Authorizing the Investment Grade Energy Audit and Project Proposal Agreement Between Energy Control, Inc. / Opterra Energy Services and the City of Gallup – Richard Matzke, Director, Gallup Electric Department

Mr. Matzke said Energy Control, Inc. (ECI) submitted a proposal to the City of Gallup to provide an investment grade energy audit of City owned facilities. The proposed project is a continuation of work initiated in 2011 as part of a joint venture with the Northwest New Mexico Council of Governments. ECI also recently completed a \$2.4 million project with McKinley County.

John McAllister of ECI said the proposed work will be done under the New Mexico Statewide Purchasing Agreement. He presented a power point presentation on the City of Gallup Efficiency Based Infrastructure Upgrade Programs. A copy of the power point presentation is attached hereto and made a part of these official Minutes.

Discussion followed concerning the term “guaranteed savings” of the proposed program; the \$2.4 million project with McKinley County; the City’s practice of replacing worn-out equipment and fixtures with high efficiency equipment and fixtures; the time-frame and the process for completing energy saving measures if the City proceeds with certain recommendations from the audit; the requirement for purchasing the energy efficient materials from ECI for the Guaranteed Savings Program; options for the City to conduct certain projects on its own, to solicit bids for certain projects based on the results of the audit or to proceed with certain projects under the Guaranteed Savings Program; the procurement process under the Statewide Pricing Agreement; a third party review to be conducted by the New Mexico Energy, Minerals and Natural Resources Department of the audit results; and the City’s no-payment obligation under the proposed Investment Grade Energy Audit and Project Proposal Agreement should ECI and the City execute the Guaranteed Utility Savings Contract. By executing the Guaranteed Utility Savings Contract, it will allow the cost of the audit to be rolled into the funding mechanisms of the Guaranteed Utility Savings Contract.

Councilor Kumar made the motion to approve Resolution No. R2016-10. Seconded by Councilor Landavazo. Roll call: Councilors Kumar, Landavazo, Palochak, Garcia, and Mayor McKinney all voted yes.

5. Fiscal Year 2016 Lodger’s Tax Funding for Events – Patty Holland, Chief Financial Officer

Ms. Holland presented the request from Zia Rides for lodger’s tax funding in the amount of \$5,000 for the 24 Hours in the Enchanted Forest event. The request has been

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reviewed and approved for funding by the Lodger's Tax Advisory Committee. Ms. Holland said the request for lodger's tax funding for this event was previously approved by the Mayor and Councilors months ago; however, there has been a change in the person responsible for organizing the event, therefore a new application for funding was required to be submitted for approval.

Councilor Landavazo asked about the requirement for the new application for funding. Ms. Holland said the new application will require the new organizer of the event to abide by the City's lodger's tax guidelines.

Councilor Palochak made the motion to approve the lodger's tax funding for events as presented. Seconded by Councilor Garcia. Councilor Palochak, Garcia, Landavazo, and Mayor McKinney all voted yes. Councilor Kumar abstained. Motion carried.

6. Resolution No. R2016-9; 2nd Quarter Fiscal Year (FY) 2016 Budget Adjustments and Report of Actuals – Patty Holland, Chief Financial Officer

Ms. Holland presented the proposed Resolution which encompasses all budget changes processed October 1, 2015 through December 31, 2015. She provided an overview of the Report of Actuals showing cumulative activity as well as the budget changes for the first quarter. Ms. Holland also presented a mid-year budget proposal for the funding of items not included in the original FY 2016 budget. Ms. Holland answered questions regarding the budget adjustments for the Customer Care phone and website system improvement; budget investment income; the data shown under Joint Utilities in the Report of Actuals; and the amounts that were overlooked and missed during the budget preparation process.

Discussion followed concerning the amounts that were overlooked during the budget preparation process for FY 2016; the City's high expenses for telephones, cellphones, T-1 service and group insurance; and the need for accurate budget reporting.

Ms. Holland explained the changes that are going to be made in preparing the budget for FY 2017. She is also working on a 10-year cash balance analysis for all funds, cleanup work is being done on the bond funds and a financial policy and procedures manual is being developed.

Mr. Snider said the City is locked into a long-term contract with CenturyLink for services set at fixed prices; however, there will be more options available in the next fiscal year to address the City's costs for telephones and related services.

For the upcoming budget preparations for FY 2017, Mayor McKinney asked for a true

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picture of the City's cost of operation. He said accurate information is needed in order for the Council to properly plan and prepare for the City's financial future.

Following discussion, Councilor Palochak made the motion to approve Resolution No. R2016-9. 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 Palochak reminded everyone to yield to emergency vehicles while driving. She also invited everyone to McKinley County/Gallup Day at the Legislature on Thursday, January 28, 2016.

Councilor Landavazo encouraged everyone to "keep believing, keep building and to support Gallup."

Councilor Kumar asked Stan Henderson, Public Works Director, for an update of the City's Curb and Gutter Replacement Program. Mr. Henderson said he is preparing the raw data in a format to be presented to the Mayor and Councilors around budget time. The program is currently suspended at this time due to the cold and inclement weather. Ms. Ustick said \$500,000 was allocated in the CIP for the Curb and Gutter Replacement Program for this fiscal year; however, staff needs to submit recommendations to the Mayor and Councilors for their consideration for next fiscal year's program. Ms. Ustick said the recommendations will be presented to the Mayor and Councilors separately from the CIP process within the next couple of months. Discussion followed concerning the problems staff is encountering with the program, such as the lack of contractors bidding on the projects, determining priorities for the program and block construction strategies as a way to comply with the Americans with Disabilities Act (ADA) transition plans imposed by state and federal governments.

Councilor Garcia also encouraged everyone to attend McKinley County/Gallup Day at the Legislature. She said Jackson Gibson, Jeff Kiely, Tawnya and Shawndey Gomez, Ray Welch, Ralph Richards, Ryan Dashner, Niles Thomas, Wade Bell, Benson Ndolo, John Dowling, and Dr. Bruce Tempest will be honored at the Legislature.

Mayor McKinney said the City will need to see how it fares with its capital outlay requests during this year's 30-day session of the Legislature. He said the City will need to recognize the financial trouble that is anticipated for the State next year as gas and oil revenues have vastly declined. Since there are differences in both legislative

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chambers and amongst party lines, Mayor McKinney said he will carry a message to encourage all legislators to form a consensus on important issues.

Comments by City Attorney and City Manager

Mr. Kozeliski recommended proceeding with concrete work when the weather warms up.

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.

Jackie McKinney, Mayor

ATTEST:

Alfred Abeita II, City Clerk

Discussion/Action Topic 1

Resolution No. R2016-11;

A Resolution Naming the Playground and Park for the Patton,
South Fork, Red Hills and Rocky View Neighborhoods

Alfred Abeita, City Clerk



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: February 9, 2016

SUBJECT: Naming of the Playground and Park to be Constructed at Basilio Drive and Clay Street
DEPT. OF ORIGIN: City Attorney
DATE SUBMITTED: February 2, 2016
SUBMITTED BY: George W. Kozeliski, City Attorney

Summary: As you will recall, Joe and Christine DiGregorio donated land to the City of Gallup for the construction of a playground and park. The City would like to express its appreciation the DiGregorio family by naming the playground "Oliva Park at Basilio Drive" in accordance with the family's preference.

Fiscal Impact: None.

Reviewed By: _____

Patty Holland
Finance Department

Attachments: Resolution No. R2016-11; A Resolution Naming the Playground and Park for the Patton, South Fork, Red Hills and Rocky View Neighborhoods.

Legal Review:

Approved As To Form: _____

[Signature]
City Attorney

Recommendation: Approve Resolution No. R2016-11.

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: _____

RESOLUTION NO. R2016-11

A RESOLUTION NAMING THE PLAYGROUND AND PARK FOR THE PATTON, SOUTH FORK, RED HILLS AND ROCKY VIEW NEIGHBORHOODS

WHEREAS, Basilio and Oliva DiGregorio have made significant contributions to Gallup over the years, beginning with the establishment of the California Market in 1938; and

WHEREAS, Basilio DiGregorio had a vision for the family business to grow and as he opened more stores, the California Supermarkets became known as the "stores that grew with Gallup," and

WHEREAS, Basilio's vision for growth not only included his family business but the entire community of Gallup as well; and

WHEREAS, due to Gallup's growth, the City of Gallup desires to build a neighborhood playground and park near Rocky View Elementary School; and

WHEREAS, Joe and Christine DiGregorio donated land to the City of Gallup to be used for the construction of the playground and park; and

WHEREAS, the Gallup City Council would like to express its appreciation to the DiGregorio family by naming the playground and park in honor of Basilio and Oliva DiGregorio, in accordance with the family's preference.

NOW THEREFORE, BE IT RESOLVED by the Governing Body of the City of Gallup, New Mexico, that the playground and park to be constructed and located at the corner of Basilio Drive and Clay Street be named

OLIVA PARK AT BASILIO DRIVE

PASSED, APPROVED AND ADOPTED this 9th day of February, 2016.

CITY OF GALLUP, NEW MEXICO

By: _____
Jackie McKinney, Mayor

ATTEST:

Alfred Abeita II, City Clerk

Discussion/Action Topic 2

Resolution No. R2016-12;
Acceptance of Legislative Appropriation 15-0806 for the
Oliva Park at Basilio Drive Construction Project

Stan Henderson, Public Works Director



CITY OF GALLUP
COUNCIL STAFF SUMMARY FORM

MEETING DATE: 9 February 2016

SUBJECT: LEGISLATIVE APPROPRIATION 15-0806 ACCEPTANCE FOR
NEW ROCKY VIEW PARK CONSTRUCTION PROJECT
DEPT. OF ORIGIN: Public Works/City Engineering
DATE SUBMITTED: 2 February 2016
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 reappropriation in the amount of \$60,000 for the subject project. In addition, the 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. However, the reversion date for this grant is 30 June 2019.

However, there is still a project shortfall of over \$85,000 for construction of the total park and its amenities. (See enclosure (3) for the current project budget.) To that end, construction will be phased with additive bid items.

Enclosures: (1) NMDFA Fund 89200 Capital Appropriation Project Agreement (15-0806)
(2) Resolution #2016-12
(3) Project Budget Estimate of 02/02/16

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:



Department Director



City Manager

CITY CLERK'S USE ONLY
COUNCIL ACTION TAKEN

Resolution

No.:

Ordinance

No.:

Approved:

Other:

Continued

To:

Referred

To:

Denied:

File No.:

**STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this ___ day of _____, 20 __, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "LGD", and the 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, Chapter 3, Section 28, Para. 159 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 Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

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:

15-0806 \$60,000.00 Appropriation Reversion Date: 30-JUN-19
Laws of 2015, Chapter 3, Section 28, Paragraph 159, sixty thousand dollars (\$60,000) to acquire property for and to plan, design, construct and equip a playground and park for the Patton, South Fork, Red Hills and Rocky View neighborhoods in Gallup in McKinley county;

The Grantee's total reimbursements shall not exceed the appropriation amount Sixty Thousand Dollars (**\$60,000.00**) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")^[1], if applicable, Zero Dollars (**\$0.00**), which equals Sixty Thousand Dollars (**\$60,000.00**) (the "Adjusted Appropriation Amount").

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". 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^[2] 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:

[1] 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.

[2] "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.

- 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 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: Stanley Henderson
Title: Public Works Director
Address: 110 W. Aztec Ave, Gallup, NM, 87301
Email: shenderson@gallup.nm.gov
Telephone: 505-863-1290
FAX: 505-726-2043

Department: DFA/Local Government Division
Name: Mr. Scott Wright
Title: Project Manager
Address: Bataan Memorial Bldg Rm 202, Santa Fe, New Mexico, 87501
Email: scott.wright@state.nm.us
Telephone: 505-827-4447
FAX: 505-827-4948

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 **June 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 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 may require directly

into a database maintained by the Department. 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 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**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Gallup** or DFA/LGD."

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 Department of Finance and Administration, Local Government Division (DFA/LGD) Grant Agreement. Should DFA/LGD 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's** 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.

ARTICLE 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 PROJECT 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]

**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)
 (Jul-Dec)

Fiscal
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
 or Fiscal Agent (if applicable)**

 Printed Name
 Date: _____

SWORN TO AND SUBSCRIBED
 before me on this _____ day
 of _____, 20____

Notary Public _____
 My Commission expires _____

Grantee Representative

 Printed Name
 Date: _____

SWORN TO AND SUBSCRIBED
 before me on this _____ day
 of _____, 20____

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: 15-0806**

As the designated representative of the Department for the Grant Agreement number 15-0806 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 of 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 of 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: _____

RESOLUTION #R2016- 12

A RESOLUTION TO THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION
FOR THE CITY OF GALLUP'S ACCEPTANCE OF STATE APPROPRIATION ID #15-0806

WHEREAS, the City of Gallup, NM was reappropriated \$60,000 "to plan, design, construct, and equip a playground and park for Rocky View, South Fork, Red Hills, and Rocky View neighborhoods" in City Of Gallup, NM 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 9th day of February 2016.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

NEW ROCKY VIEW PARK CONSTRUCTION PRJ

CONCEPTUAL Project Budget

Line Item Description	Weight	Estimated Amounts	SubTotals	Comments
PROJECT REVENUE			\$ 160,000.00	
City General Funds				
City Enterprise Funds				
City Bond Funds				
Legislative Funding				
2015 Legislature		\$ 60,000.00		CP 15-0806
2015 Legislature		\$ 100,000.00		CP 15-0807
<hr/>				
PROJECT EXPENDITURES				
Project Planning	0.0000%		\$ -	
Feasibility Study				
Property Acquisition				
NM Gross Receipt Tax	8.3125%			
Project Development	11.0000%		\$ 20,909.73	
Independent Cost Estimate				
A/E Design	7.0000%	\$ 12,285.00		
A/E Changes				
Project Certifications				
Special Reports	2.0000%	\$ 3,510.00		
Public Involvement	2.0000%	\$ 3,510.00		
Material Submittal Review				
NM Gross Receipt Tax	8.3125%	\$ 1,604.73		
Project Delivery	9.0000%		\$ 17,107.96	
Independent Cost Estimate				
Contract/Grant Administration	2.0000%	\$ 3,510.00		
Bid Assistance	1.0000%	\$ 1,755.00		
Quality Assurance	5.0000%	\$ 8,775.00		
Material Testing	1.0000%	\$ 1,755.00		
NM Gross Receipt Tax	8.3125%	\$ 1,312.96		
Construction	100.0000%		\$ 190,088.44	\$175,500.00
Base Bid				
1 Vehicle Parking Lot.		\$ 50,000.00		
2 Storm Drainage Improvements.		\$ 15,000.00		
3 ADA Access Compliant.		\$ 10,000.00		
4 Playground Equipment.		\$ 30,000.00		
5 Basketball Courts.		\$ 40,000.00		
Bid Additives				
6 Picnic Shelters - 3 Each		\$ 7,500.00		
7 Park Lighting.		\$ 10,000.00		
8 Wrought Iron/Decorative Fencing.		\$ 5,000.00		
9 Landscaping.		\$ 8,000.00		
NM Gross Receipt Tax	8.3125%	\$ 14,588.44		
Construction Changes	0.0000%		\$ -	Construction Change Orders.
1				
2				
NM Gross Receipt Tax				
Contingency	10.0000%	\$ 19,008.84	\$ 19,008.84	
Total Estimated Costs			\$ 247,114.97	
PROJECT BALANCE			\$ (87,114.97)	

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

Enclosure (3)

Discussion/Action Topic 3

Resolution No. R2016-13;
Acceptance of Legislative Appropriation 15-0807 for the
Oliva Park at Basilio Drive Construction Project

Stan Henderson, Public Works Director



CITY OF GALLUP

COUNCIL STAFF SUMMARY FORM

MEETING DATE: 9 February 2016

SUBJECT: LEGISLATIVE APPROPRIATION 15-0807 ACCEPTANCE FOR
NEW ROCKY VIEW PARK CONSTRUCTION PROJECT
DEPT. OF ORIGIN: Public Works/City Engineering
DATE SUBMITTED: 2 February 2016
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 reappropriation in the amount of \$100,000 for the subject project. In addition, the 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. However, the reversion date for this grant is 30 June 2019.

However, there is still a project shortfall of over \$85,000 for construction of the total park and its amenities. (See enclosure (3) for the current project budget.) To that end, construction will be phased with additive bid items.

Enclosures: (1) NMDFA Fund 89200 Capital Appropriation Project Agreement (15-0807)
(2) Resolution #2016-13
(3) Project Budget Estimate of 02/02/16

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:

Stalder

Department Director

[Signature]

City Manager

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Resolution

No.:

Ordinance

No.:

Approved:

Other:

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To:

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To:

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File No.:

**STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this ___ day of _____, 20 __, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "LGD", and the 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, Chapter 3, Section 28, Para. 160 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 Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

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:

15-0807 \$100,000.00 Appropriation Reversion Date: 30-JUN-19
Laws of 2015, Chapter 3, Section 28, Paragraph 160, one hundred thousand dollars (\$100,000) to acquire property for and to plan, design, construct and equip a playground and park for the Rocky View, Patton, South Fork and Red Hills neighborhoods in Gallup in McKinley county;

The Grantee's total reimbursements shall not exceed the appropriation amount One Hundred Thousand Dollars (**\$100,000.00**) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")^[1], if applicable, Zero Dollars (**\$0.00**), which equals One Hundred Thousand Dollars (**\$100,000.00**) (the "Adjusted Appropriation Amount").

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". 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^[2] 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:

[1] 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.

[2] "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.

- 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 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: Stanley Henderson
Title: Public Works Director
Address: 110 W. Aztec Ave, Gallup, NM, 87301
Email: shenderson@gallup.nm.gov
Telephone: 505-863-1290
FAX: 505-726-2043

Department: DFA/Local Government Division
Name: Mr. Scott Wright
Title: Project Manager
Address: Bataan Memorial Bldg Rm 202, Santa Fe, New Mexico, 87501
Email: scotth.wright@state.nm.us
Telephone: 505-827-4447
FAX: 505-827-4948

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 **June 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 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 may require directly

into a database maintained by the Department. 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 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**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Gallup** or DFA/LGD."

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 Department of Finance and Administration, Local Government Division (DFA/LGD) Grant Agreement. Should DFA/LGD 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**'s 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.

ARTICLE 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 PROJECT 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.

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**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
 or Fiscal Agent (if applicable)**

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: 15-0807**

As the designated representative of the Department for the Grant Agreement number 15-0807 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 of 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 of 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: _____

RESOLUTION #R2016-13

A RESOLUTION TO THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION
FOR THE CITY OF GALLUP'S ACCEPTANCE OF STATE APPROPRIATION ID #15-0807

WHEREAS, the City of Gallup, NM was reappropriated \$100,000 "to plan, design, construct, and equip a playground and park for Rocky View, South Fork, Red Hills, and Rocky View neighborhoods" in City Of Gallup, NM 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 9th day of February 2016.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

NEW ROCKY VIEW PARK CONSTRUCTION PRJ

CONCEPTUAL Project Budget

Line Item Description	Weight	Estimated Amounts	SubTotals	Comments
PROJECT REVENUE			\$ 160,000.00	
City General Funds				
City Enterprise Funds				
City Bond Funds				
Legislative Funding				
2015 Legislature		\$ 60,000.00		CP 15-0806
2015 Legislature		\$ 100,000.00		CP 15-0807
<hr/>				
PROJECT EXPENDITURES				
Project Planning	0.0000%		\$ -	
Feasibility Study				
Property Acquisition				
NM Gross Receipt Tax	8.3125%			
Project Development	11.0000%		\$ 20,909.73	
Independent Cost Estimate				
A/E Design	7.0000%	\$ 12,285.00		
A/E Changes				
Project Certifications				
Special Reports	2.0000%	\$ 3,510.00		
Public Involvement	2.0000%	\$ 3,510.00		
Material Submittal Review				
NM Gross Receipt Tax	8.3125%	\$ 1,604.73		
Project Delivery	9.0000%		\$ 17,107.96	
Independent Cost Estimate				
Contract/Grant Administration	2.0000%	\$ 3,510.00		
Bid Assistance	1.0000%	\$ 1,755.00		
Quality Assurance	5.0000%	\$ 8,775.00		
Material Testing	1.0000%	\$ 1,755.00		
NM Gross Receipt Tax	8.3125%	\$ 1,312.96		
Construction	100.0000%		\$ 190,088.44	\$175,500.00
Base Bid				
1 Vehicle Parking Lot.		\$ 50,000.00		
2 Storm Drainage Improvements.		\$ 15,000.00		
3 ADA Access Compliant.		\$ 10,000.00		
4 Playground Equipment.		\$ 30,000.00		
5 Basketball Courts.		\$ 40,000.00		
Bid Additives				
6 Picnic Shelters - 3 Each		\$ 7,500.00		
7 Park Lighting.		\$ 10,000.00		
8 Wrought Iron/Decorative Fencing.		\$ 5,000.00		
9 Landscaping.		\$ 8,000.00		
NM Gross Receipt Tax	8.3125%	\$ 14,588.44		
Construction Changes	0.0000%		\$ -	Construction Change Orders.
1				
2				
NM Gross Receipt Tax				
Contingency	10.0000%	\$ 19,008.84	\$ 19,008.84	
Total Estimated Costs			\$ 247,114.97	
PROJECT BALANCE			\$ (87,114.97)	

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

Enclosure (3)

Discussion/Action Topic 4

Resolution No. R2016-14;
Acceptance of Legislative Appropriation 15-1134 for
New Skate Board Park Construction Project

Stan Henderson, Public Works Director



**CITY OF GALLUP
COUNCIL STAFF SUMMARY FORM**

MEETING DATE: 9 February 2016

SUBJECT: LEGISLATIVE APPROPRIATION 15-1134 ACCEPTANCE FOR
NEW SKATE BOARD PARK CONSTRUCTION PROJECT
DEPT. OF ORIGIN: Public Works/City Engineering
DATE SUBMITTED: 2 February 2016
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 reappropriation in the amount of \$50,000 for the subject project. In addition, the 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. However, the reversion date for this grant is 30 June 2017.

However, there is still a project shortfall of over \$400,000 for construction. (See enclosure (3) for the current project budget.) City Staff is working with Southwest Indian Foundation to raise private donations, and it has also requested additional funding from the State Legislature.

Enclosures: (1) NMDFA Fund 89200 Capital Appropriation Project Agreement (15-1134)
(2) Resolution #2016-¹⁴
(3) Project Budget Estimate of 02/02/16

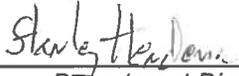
Legal Review

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:



Department Director



City Manager

CITY CLERK'S USE ONLY
COUNCIL ACTION TAKEN

Resolution
No.: _____
Ordinance
No.: _____
Approved: _____

Other: _____

Continued
To: _____
Referred
To: _____
Denied: _____

File No.: _____

**STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this ___ day of _____, 20 __, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "LGD", and the 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, Chapter 147, Section 36 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 Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

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:

**~~15-1134~~ \$50,000.00 Appropriation Reversion Date: 30-JUN-17
Laws of 2015, Chapter 147, Section 36, Fifty Thousand Dollars (\$50,000.00) The unexpended balance of the appropriation to the department of environment in Subsection 39 of Section 23 of Chapter 226 of Laws 2013 for remediation at the Gallup-McKinley county public school district maintenance facility site shall not be expended for the original purpose but is appropriated to the local government division to plan, design and construct a skate park in Gallup in McKinley county.**

The Grantee's total reimbursements shall not exceed the appropriation amount Fifty Thousand Dollars (**\$50,000.00**) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")⁽¹⁾, if applicable, Zero Dollars (**\$0.00**), which equals Fifty Thousand Dollars (**\$50,000.00**) (the "Adjusted Appropriation Amount").

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". 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^[2] 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:

[1] 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.

[2] "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.

- 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 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: Stanley Henderson
Title: Public Works Director
Address: 110 W. Aztec Ave, Gallup, NM, 87301
Email: shenderson@gallup.nm.gov
Telephone: 505-863-1290
FAX: 505-726-2043

Department: DFA/Local Government Division
Name: Mr. Scott Wright
Title: Project Manager
Address: Bataan Memorial Bldg Rm 202, Santa Fe, New Mexico, 87501
Email: scott.wright@state.nm.us
Telephone: 505-827-4447
FAX: 505-827-4948

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 **June 30, 2017**, 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 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 may require directly

into a database maintained by the Department. 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 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**, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Gallup** or DFA/LGD."

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 Department of Finance and Administration, Local Government Division (DFA/LGD) Grant Agreement. Should DFA/LGD 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's** 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.

ARTICLE 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 PROJECT 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]

**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
or Fiscal Agent (if applicable)**

Printed Name
Date: _____

SWORN TO AND SUBSCRIBED
before me on this _____ day
of _____, 20____

Notary Public _____
My Commission expires _____

Grantee Representative

Printed Name
Date: _____

SWORN TO AND SUBSCRIBED
before me on this _____ day
of _____, 20____

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: 15-1134**

As the designated representative of the Department for the Grant Agreement number 15-1134 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 of 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 of 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: _____

RESOLUTION #R2016-14

A RESOLUTION TO THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION
FOR THE CITY OF GALLUP'S ACCEPTANCE OF STATE APPROPRIATION ID #15-1134

WHEREAS, the City of Gallup, NM was reappropriated \$50,000 "to plan, design, and construct a skate park" in City Of Gallup, NM 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 9th day of February 2016.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

CONCRETE SKATE BOARD PARK CONSTRUCTION PRJ
Project Budget (-15% To +25%) Estimate

Line Item Description	Weight	Estimated Amounts	SubTotals	Comments
PROJECT REVENUE			\$ 145,000.00	
City General Funds				
City Enterprise Funds				
City Bond Funds				
Legislative Funding				
2014 Legislature Appropriation		\$ 40,000.00		For A/E Design Costs
2015 Legislature Reauthorization (#15-1134)		\$ 50,000.00		Reallocated Funds
2016 Legislature Appropriation				Pending Request
Other Public Funding				
Business Improvement District				
Clean n Beautiful Funding				
Private Sector Funding				
South West Indian Foundation		\$ 50,000.00		Verbal Commitment
Councilor Kumar		\$ 5,000.00		Verbal Commitment
Tony Hawke Foundation				Pending \$25K Request
Other Private Contributions				
PROJECT EXPENDITURES				
Project Planning	0.0000%		\$ -	
Feasibility Study		\$ -		For Site Selection
Property/Land Acquisition				
ROW/Easement Acquisition				
NM Gross Receipt Tax	8.3125%			
Project Development	8.7401%		\$ 39,988.47	PO #080683 dtd 12/02/14
Independent Cost Estimate				
A/E Design		\$ 37,372.40		MWRM proposal dtd 10/31/14. (Includes site selection above.)
A/E Changes				
Project Certifications				
Special Reports				
Public Participation				
Material Submittal Review				
NM Gross Receipt Tax	7.0000%	\$ 2,616.07		
Project Delivery	9.0000%		\$ 41,177.69	
Independent Cost Estimate				
Contract/Grant Administration	2.0000%	\$ 8,448.33		
Bid Assistance	1.0000%	\$ 4,224.17		
Quality Assurance	5.0000%	\$ 21,120.83		
Material Testing	1.0000%	\$ 4,224.17		
NM Gross Receipt Tax	8.3125%	\$ 3,160.20		
Construction	100.0000%		\$ 457,529.87	\$422,416.50
Base Bid		\$ 422,416.50		MRWM estimate of 11/24/15.
Bid Additives				
NM Gross Receipt Tax	8.3125%	\$ 35,113.37		
Construction Changes	0.0000%		\$ -	Construction Change Orders.
1				
2				
NM Gross Receipt Tax				
Contingency	4.8749%	\$ 22,303.97	\$ 22,303.97	
Total Estimated Costs			\$ 561,000.00	
PROJECT BALANCE			\$ (416,000.00)	

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

Enclosure (3)

Discussion/Action Topic 5

**Approval and Acceptance of the Local Liquor Excise Tax
Accountability Report for 4th Quarter Calendar Year 2015**

Debra Martinez, McKinley County DWI Director

**Liquor Excise Tax
2015 Calendar Year
4th Quarter (October, November, December)
Accountability Report**

Name	Number served
City of Gallup- Gallup Police Department	4,025 taken to Gallup Detox.
Detox	5391 Admissions
McKinley County-DWI Program	24 Intensive Outpatient Program: 15 Males, 9 Females
McKinley County- JSACC	Juvenile Detox- 37, Casemangement -19, Follow ups- 16. Boys Council-7, Botvin Life Skills 12, NIYLP-15

**APPROVAL AND ACCEPTANCE
OF THE
LOCAL LIQUOR EXCIST TAX
ACCOUNTABILITY REPORT**

WHEREAS, the Board of County Commissioners of McKinley County in open meeting on February 2, 2016, reviewed the attached Accountability Report for calendar year 2015 4th Quarter; and, has by motion accepted and approved the same pursuant to NMSA 1978 §7-24-10.1.

McKINLEY COUNTY BOARD OF COMMISSIONERS:

DATE: _____

By: _____
Anthony Tanner, Chairperson

ATTEST:

Harriett K. Becenti, County Clerk

WHEREAS, the City of Gallup Council in open meeting on February 9th, 2016, reviewed the attached Accountability Report for calendar year 2015 4th Quarter; and, has by motion accepted and approved the same pursuant to NMSA 1978 §7-24-10.1.

CITY OF GALLUP:

DATE: _____

By: _____
Jackie McKinney, Mayor

ATTEST:

Alfred Abeita, City Clerk

**Liquor Excise Tax
2015 Calendar Year
Final Report
Accountability Report**

Name	Amount	Number served
City of Gallup- Gallup Police Department	\$413,242	18,600 taken to Gallup Detox.
Detox (NCI) 4th Quarterly Only		5391 Admissions
McKinley County-DWI Program	\$100,000	98 Intensive Outpatient Program: 70 Males, 28 Females
McKinley County-JSACC	\$200,000	Juvenile Detox- 123, Casemangement -60, Follow ups-135. Boys Council-28, Outreach-595, Botvin Life Skills 60, NIYLP-138
Pueblo of Zuni- New Beginnings (6 months)	\$14,397.81	14 received shelter services, 16 completed Assessments or Screenings, 34 BIP Offenders Assessed
Pueblo of Zuni- Zuni Recover Center (6 months)	\$8,925	80 Clients received CBT4CBT
Na'Nizhoozhi Center- NCI (6 Months)	\$17,500.00	28 clients received 1st Step Out Patient Services
Boys & Girls Club of Gallup (6 Months)	\$17,500.00	Average of 1,200 Students per month= 7,200 (Estimated/Some maybe duplicated)
Hands of Hope	\$5,254.64	702 Students received Creating Positive Relationships
Big Brothers Big Sisters Of Northern New Mexico (6 Months)	\$12,931.30	112 matches and 14 interviews
National Indian Youth Leadership Project (6 Months)	\$17,500.00	392 Youth received services
NN Detox	\$128,961.15	No data reported

**APPROVAL AND ACCEPTANCE
OF THE
LOCAL LIQUOR EXCISE TAX
ACCOUNTABILITY REPORT**

WHEREAS, the Board of County Commissioners of McKinley County in open meeting on February 2, 2016, reviewed the attached Accountability Report for calendar year 2015 Final Report; and, has by motion accepted and approved the same pursuant to NMSA 1978 §7-24-10.1.

McKINLEY COUNTY BOARD OF COMMISSIONERS:

DATE: _____

By: _____
Anthony Tanner, Chairperson

ATTEST:

Harriett K. Becenti, County Clerk

WHEREAS, the City of Gallup Council in open meeting on February 9th, 2016, reviewed the attached Accountability Report for calendar year 2015 Final Report; and, has by motion accepted and approved the same pursuant to NMSA 1978 §7-24-10.1.

CITY OF GALLUP:

DATE: _____

By: _____
Jackie McKinney, Mayor

ATTEST:

Alfred Abeita, City Clerk

Discussion/Action Topic 6

Appointments to the Gallup Sports and Youth Commission

Mayor Jackie McKinney



CITY OF GALLUP
OFFICE OF THE MAYOR
STATE OF NEW MEXICO

January 20, 2016

MEMORANDUM

TO: City Councilors
FROM: 
Mayor Jackie McKinney
RE: Gallup Sports and Youth Commission

I would ask for your ratification to appoint the following individuals to the Gallup Sports and Youth Commission:

<u>Name</u>	<u>Representing</u>
Gary Schuster	Gallup McKinley County Schools
Kelly Mortensen	Gallup Youth Soccer League
Markos Chavez	Gallup Adult Soccer League
Glen Benefield	Tony Dorsett Football League
Vacant/to be appointed	Gallup Adult Basketball League
Denise Parra	Gallup Youth Basketball League
Kevin Menapace	Gallup Amateur Baseball/Softball
Sheila Silva	Gallup Adult Baseball/Softball
Gloria Saucedo	Gallup Old Timers Softball
Marc DePauli	Member at Large
Kenny Carabajal	Member at Large
Vince Alonzo	Member at Large

All of the terms of the previous commission members have expired. The new appointments will provide a broad base cross representation for all youth and adult leagues in Gallup.

Thank you for your consideration of this matter.

Discussion/Action Topic 7

Acceptance of an Easement from Dorian Collins for Reach 27.6,
Project #6 of the Navajo Gallup Water Supply Project

Vince Tovar, Director, Gallup Water and Sanitation Department



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: February 9, 2016

SUBJECT: Easements to the City of Gallup for Reach 27.6 Project # 6
DEPT. OF ORIGIN: City Attorney
DATE SUBMITTED: February 1, 2016
SUBMITTED BY: George W. Kozeliski, City Attorney

Summary: This is a continuation of obtaining easements for the Navajo/Gallup water pipeline from South of Gamerco to east of Gallup. Simms/Kircher interest is granting an easement over one tract of property.

Fiscal Impact: None

Reviewed By: *Patty Holland*
Finance Department

Attachments: Grant of Easement from Dorian Collins

Legal Review: Approved

Approved As To Form: *[Signature]*
City Attorney

Recommendation: Accept easement

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: _____

ACCEPTANCE

Comes now the CITY OF GALLUP, NEW MEXICO and hereby accepts the above Grant of
Easement this ____ day of February, 2016.

CITY OF GALLUP

By _____
Jackie McKinney, Mayor

ATTEST:

Alfred Abeita, City Clerk

Discussion/Action Topic 8

**Approval of Easement Agreement with Dallago Corporation and
Acceptance of an Easement from Dallago Corporation for
Reach 27.6, Project #6 of the Navajo Gallup Water Supply Project**

Vince Tovar, Director, Gallup Water and Sanitation Department



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: February 9, 2016

SUBJECT: Easements to the City of Gallup for Reach 27.6 Project # 6
DEPT. OF ORIGIN: City Attorney
DATE SUBMITTED: February 1, 2016
SUBMITTED BY: George W. Kozeliski, City Attorney

Summary: This completes the final easement for the Navajo/Gallup water pipeline from South of Gamerco to east of Gallup. Dallago Corporation is granting an easement over the last tract of property.

Fiscal Impact: None

Reviewed By: Patty Holland
Finance Department

Attachments: Grant of Easement from Dallago Corporation

Legal Review: Approved

Approved As To Form: [Signature]
City Attorney

Recommendation: Accept easement

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: _____

NAVAJO GALLUP WATER SUPPLY PROJECT
EASEMENT AGREEMENT

This Agreement made and entered in this ____ day of February, 2016, by and between the City of Gallup , a New Mexico municipal corporation, hereinafter referred to as "City", and Dallago Corporation, a New Mexico Corporation, hereinafter referred to as "Dallago Corporation", the property owner,

WHEREAS, City desires to obtain an easement across property owned or controlled by Dallago Corporation for the placement of a waterline for what is known as the Navajo Gallup Water Supply Project (NGWSP), and to bring water from San Juan River to the Gallup, New Mexico area and;

WHEREAS, the Dallago Corporation is willing to grant such easement to the City at no cost, under certain conditions and for certain consideration, it is hereby agreed as follows:

1. Dallago Corporation is granting the easement needed to the City for the NGWSP simultaneous with this agreement, and in consideration for the covenants and promises made in this agreement.
2. The Dallago Corporation will be able to access NGWSP waterline, when built, at two (2) locations as agreed to by the parties and marked on the attached "Exhibit A" at no cost. The parties further agree that City shall cause to be installed two (2) tees, at the location marked on the attached exhibit, with proper valving, for the purpose of future service to Dallago Corporation at no cost to Dallago Corporation. Upon Dallago Corporation making use of such tee, Dallago Corporation shall be responsible for all costs associated with the necessary materials, labor and equipment necessary to provide service to Dallago Corporation
3. The parties agree Dallago Corporation, once tapped into the water supply, will be charged at the rate charged by the City for water within the city limits to commercial customers (commercial volume charge) plus the customary monthly service charge plus any applicable surcharges and taxes, with the same being subject to periodic rate changes in Gallup's water rates and not at the higher rate for water customers outside the city limits of Gallup.
4. In addition to the provisions above, City agrees that there will be no fees, such as tap fee, shall be charged to Dallago Corporation in the future if, and when, Dallago Corporation, or its successors-in-interest desire to access the water line which is to be constructed on the easements granted by Dallago Corporation. Dallago Corporation understands that it will be responsible for any and all costs associated with the design and construction of any pipe lines, valves, pressure regulators, pumps, tanks or other appurtenances necessary to provide water

of sufficient capacity and pressure to support development by Dallago Corporation on its property.

5. Dallago Corporation understands and agrees that they will be required to obtain and install any equipment which may be necessary to reduce water pressure from the NGWSP line and install other equipment at their own expense in order to use it in a commercial reasonable way.
6. Dallago Corporation understands that the amount of water City will be obtaining as part of the NGWSP is limited in both quantity and availability, and supplies to Dallago Corporation in support of future development will be limited by the constraints placed on City under its various agreements for NGWSP, and subject to State and Federal regulations.
7. City and Dallago Corporation agree that, instead of a tap into the Navajo/Gallup transmission line, Dallago Corporation, at its option, may elect to have a free water tap into the City's service water line in Hasler Valley Road a/k/a County Road 43.
8. The parties warrant that each has the legal authority to enter into this Agreement is binding upon their respective successors, assigns, grantees, or any entity claiming by or through them.
9. This Agreement may only be modified or changed herein by a subsequent written agreement executed by both parties hereto.

DALLAGO CORPORATION

By: 
David Dallago, President of Dallago Corporation

CITY OF GALLUP

By: _____
Jackie McKinney, Mayor

Attest:

By: _____
Alfred Abeita, City Clerk

GRANT OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, **DALLAGO CORPORATION**, a New Mexico Corporation, hereinafter termed the Grantor for and in consideration of the covenants and consideration in that certain Navajo Gallup Water Supply Easement Agreement between the parties entered into simultaneously herewith, hereby grants, and conveys unto the **CITY OF GALLUP, NEW MEXICO**, a New Mexico municipal corporation, a perpetual, full and unrestricted easement for utility purposes, in, upon, over and across the following described strips, tracts and parcels of land located in McKinley County, New Mexico, hereinafter described as follows:

DESCRIPTION

A STRIP OF LAND IN THE NORTHEAST QUARTER OF SECTION 14, T15N, R18W, NMPM, GALLUP, MCKINLEY COUNTY, NEW MEXICO LYING WITHIN TRACT 16 AND PARTIALLY WITHIN TRACT 15 AS SHOWN ON THE PLAT OF GALLUP NORTHEAST ANNEX-PHASE 1 FILED IN THE OFFICE OF THE CLERK OF MCKINLEY COUNTY ON JULY 9, 2008 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 14 SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID TRACT 16; THENCE S00°57'10"E ON A NEW MEXICO STATE PLANE WEST ZONE GRID BEARING A DISTANCE OF 749.15' TO THE NORTHEAST CORNER OF THE HEREIN DESCRIBED STRIP, A POINT ON THE EAST LINE OF SAID TRACT 16 AND THE REAL POINT OF BEGINNING;

THENCE N82°15'30"W, 128.02' TO A POINT;

THENCE S81°36'12"W, 56.61' TO A POINT;

THENCE S65°27'53"W, 198.51' TO THE NORTHWEST CORNER;

THENCE S24°30'27"E, 4.16' TO THE SOUTHWEST CORNER, A POINT ON THE NORTHERLY LINE OF AN EXISTING 20' WIDE EASEMENT TO THE CITY OF GALLUP;

THENCE EASTERLY ALONG SAID NORTHERLY LINE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 782.75' AN ARC LENGTH OF 371.98' AND A LONG CHORD OF 368.49' WHICH BEARS N79°06'23"E TO THE SOUTHEAST CORNER, A POINT ON THE EAST BOUNDARY OF SAID TRACT 16;

THENCE N00°57'10"W, 7.60' TO THE REAL POINT OF BEGINNING.

CONTAINING 0.14 ACRES MORE OR LESS.

To have and to hold the said easement for the purposes aforesaid, to the City of Gallup, its successor and assigns so long as the said easement shall not be abandoned for utility purposes.

Dated this 5 day of February, 2016

Dallago Corporation

By: *David Dallago*
David Dallago, President

STATE OF NEW MEXICO)
) ss.
COUNTY OF MCKINLEY)

The foregoing instrument was acknowledged before me this 5th day of February, 2016, by David Dallago, President, for and on behalf of Dallago Corporation., a New Mexico Corporation.

Steph A. Martinez
Notary Public

My commission expires:

November 23rd, 2018

ACCEPTANCE

Comes now the CITY OF GALLUP, NEW MEXICO and hereby accepts the above Grant of Easement this ____ day of February, 2016.

CITY OF GALLUP

By _____
Jackie McKinney, Mayor

ATTEST:

Alfred Abeita, City Clerk

Discussion/Action Topic 9

Resolution No. R2016-15;

Approving Submission of a Bureau of Reclamation Grant Application
for the Gallup/NGWSP "Water Commons" Drought Contingency Plan

Vince Tovar, Director, Gallup Water and Sanitation Department



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM
MEETING DATE: February 9, 2016

SUBJECT: Bureau of Reclamation (BOR) Grant application No. BOR-UR-16-F001 for development and implementation of - **Gallup/NGWSP "Water Commons" Drought Contingency Plan**
DEPT. OF ORIGIN: Water and Sanitation
DATE SUBMITTED: Friday January 29, 2016
SUBMITTED BY: Vincent R. Tovar, Director Water & Sanitation

Summary: Subject to Council Authorization, the City Water Conservation staff will submit a Bureau of Reclamation (BOR) Grant Application No. BOR-UR-16-F001: **Gallup/NGWSP "Water Commons" Drought Contingency Plan**. If successful, The City will develop a Drought Planning Process by:

- Identifying Stakeholders
- Historical Drought & Impact Assessment
- Drought Mitigation & Response Strategies
- Staged Drought Response Program
- Plan Objectives & Principals
- Drought Vulnerability Assessment
- Trigger Points & Response Targets
- Implementation and Monitoring Plan, etc.

The **"Water Commons" Drought Contingency Plan** will provide a proactive plan to protect Gallup's limited ground water resources, especially in case of emergency situations.

Fiscal Impact:

Reviewed By: *Patty Holland*
Finance Department

Total Program Cost is estimated to be \$57,500 which includes the BOR Grant of \$25,000. \$2,500 in-kind staff time and \$30,000 from Water Department Budget. City funding for the Project will be through the Annual City Budget Process and anticipated Water Revenue from Fiscal Year 2016/2017.

Attachments: Resolution R2016- 15

Legal Review:

Approved As To Form: *[Signature]*
City Attorney

Recommendation: Staff recommends that the Mayor and Council approve Resolution R2016- endorsing the **Gallup/NGWSP "Water Commons" Drought Contingency Plan** grant application partnership between the City of Gallup and the Bureau of Reclamation.

Approved for Submittal By:

Vincent R. Tovar
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 OF
THE GALLUP CITY COUNCIL**

RESOLUTION No. R2016-15

**Approving submission of a Bureau of Reclamation (BOR) Grant # BOR-UC-16-F001
Application for the City of Gallup
*Gallup/NGWSP "Water Commons" Drought Contingency Plan***

WHEREAS, this Resolution is to approve the new submission of the *Gallup/NGWSP "Water Commons" Drought Contingency Plan # BOR-UC-16-F001* grant application between the Bureau of the Reclamation (BOR) and the City of Gallup, and;

WHEREAS, the City Gallup recognizes that the amount of water available to the City and its water utility customers is limited and subject to depletion during periods of extended drought. Drought also directly impacts NGWSP stakeholders and the Bureau of Reclamation's ability to deliver water and power to contractors, central to Reclamation's mission;

WHEREAS, if awarded, this planning process will create and develop a Drought Planning Task Force, a Detailed Work Plan and a Communication and Outreach Plan. Important components of this *Gallup/NGWSP "Water Commons" Drought Contingency Plan* and;

WHEREAS, this *Gallup/NGWSP "Water Commons" Drought Contingency Plan* has widespread, collaborative, multiple communitywide stakeholder support, and;

WHEREAS, the *Gallup/NGWSP "Water Commons" Drought Contingency Plan* will include elements of the National Drought Mitigation Center (NDMC) 10-Step Drought Planning Process – Stakeholders & Plan Objectives & Principals; Historical Drought & Impact Assessment; Drought Vulnerability Assessment; Drought Mitigation & Response Strategies; Drought Stages, Trigger Points & Response Targets; Staged Drought Response Program; Implementation and Monitoring; Plan Review and Updates; Implementation and;

WHEREAS, *Gallup/NGWSP "Water Commons" Drought Contingency Plan* total cost is estimated to be \$57,500 which includes a \$25,000 Federal Bureau of Reclamation grant funding, matched with \$2,500 In-Kind Water Conservation Coordinator grant administrative staff hours, and Water & Sanitation Department In-Kind expense of \$30,000 to hire the NWNMCOG as the lead professional consultant, and;

NOW THEREFORE, BE IT RESOLVED that the Governing Body of the City of Gallup does here-by approve the submission, and; if awarded, implementation of the *Gallup/NGWSP "Water Commons" Drought Contingency Plan* BOR funding application and partnership between the City of Gallup and the Bureau of Reclamation;

PASSED, ADOPTED AND APPROVED this 9th day of February, 2016, in a duly called meeting of the Gallup City Council at which a quorum was present, at Gallup, New Mexico, by a vote of ____ in favor, ____ opposed, and ____ abstaining.

BY: _____
Jackie McKinney, Mayor
City of Gallup

ATTEST: _____
Alfred Abeita, City Clerk

Discussion/Action Topic 10

**Budget Adjustment for Professional and Legal Services
for the G-22 Water Rights Acquisition**

Vince Tovar, Director, Gallup Water and Sanitation Department



COUNCIL STAFF SUMMARY FORM

MEETING DATE: February 9, 2016

SUBJECT: Budget Adjustment / Professional and Legal Services – G-22 Water Rights Acquisition
DEPT. OF ORIGIN: Water and Sanitation
DATE SUBMITTED: Friday January 29, 2016
SUBMITTED BY: Vincent R. Tovar, Director Water & Sanitation

Summary: Efforts to acquire G-22 Water Rights have reached another critical point as Protestant's motions for surrebuttal and request to move the hearing to December 2016 were upheld by the Office of The State Engineer. As a result, depositions have been scheduled for February and March in preparation for the hearings in December 2016.

- Request that \$250,000 be made available for G-22 Water Rights Acquisition.

Fiscal Impact:

Reviewed By: Patty Holland
Finance Department

Funding will be through the Environmental Surcharge Special Revenue Fund.

Attachments: None

Legal Review: Our attorneys have tried to expedite this matter and have lost all motions. The trial has been moved from July of 2015 to December 2016.

Approved As To Form: [Signature]
City Attorney

Recommendation: Staff recommends to Council that authorization be provided to fund G-22 Water Rights Acquisition.

Approved for Submittal By:

Vincent R. Tovar
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:	_____

Discussion/Action Topic 11

Resolution R2016-16;

**A Resolution Approving the Growth Management Master Plan
2016 Update for the City of Gallup**

**Clyde (C.B.) Strain, Planning Director and
Steve Burstein, Architectural Research Consultants, Inc.**

RESOLUTION _____

**Resolution of the City of Gallup City Council
To Adopt the Growth Management Master Plan 2016 Update**

WHEREAS, the City of Gallup has an adopted comprehensive plan, the Growth Management Master Plan 2009 Update, which is dated and lacks certain elements needed to be fully compliant with the NMAC CDBG Rule 2.110.2H.1 – including facilities, water, utilities, and hazards mitigation; and

WHEREAS, the City desired to update information in the current plan regarding existing conditions, land use, economic development, trails and open space and housing; and

WHEREAS, the City formed a steering committee consisting of City department heads, City Manager, Greater Gallup Economic Development Commission and Northwest New Mexico Council of Governments to guide the plan development, which met six times; and

WHEREAS, the City Planning and Zoning Commission conducted three meetings to review the plan and take public input and recommended City Council to adopt the plan.

NOW THEREFORE BE IT RESOLVED that the City Council does adopt the Growth Management Master Plan 2016 Update with proposed changes (if any) made by City Council identified at the February 9, 2016 meeting and additional technical editing of the document.

PASSED, ADOPTED, AND APPROVED, THIS 9th, DAY OF FEBRUARY, 2016.

CITY OF GALLUP, MCKINLEY COUNTY

BY: _____
JACKIE MCKINNEY, MAYOR
CITY OF GALLUP

ATTEST:

Alfred Abeita
City Clerk

II. Implementation Plan

The Implementation Plan lists actions involved in implementing the Growth Management Master Plan as updated. Actions are categorized by priority.

Text Color Key

Rust - proposed new language

Black - language from 2009 Growth Management Master Plan

A. Introduction

The implementation plan identifies specific actions that the City should take to implement the recommendations in the Growth Management Master Plan as updated. Organization of the actions is according to subject and time frame. The development of each plan element, particularly the goals, objectives and policies, identified various activities.

Almost all implementation actions require funding for staffing, building facilities and infrastructure, providing financial incentives, or consultant professional services. The City of Gallup cannot commit to specific actions and projects unless adequate funding is available. Currently, the city's fiscal resources are limited and without surplus revenues for major new undertakings.

B. Implementation Actions

The following table presents the full set of identified actions to implement the updated Growth Management Master Plan over a period of years. Each action is associated with a desired time frame: short-term for the first one to three years, mid-term for years three to seven, long-term for years seven to 20, and ongoing for implementing actions periodically throughout the planning period.

Time Frame				Action
Short Term (1-2 Years)	Intermediate (3-5 Years)	Long Term (>5 Years)	Ongoing	
Land Use				
■				Update Land Development Standards to be consistent with the updated Growth Management Master Plan
	■			Develop a theme and create community gateways (architecture, landscaping or signage).
■				Promote project development master plans for the Mendoza Road and Rehoboth areas and other areas expected to develop
■	■			Develop zoning for designated growth areas, particularly in the Mendoza Road, Rehoboth and Allison Bridge areas through development project master plans.
	■			Provide incentives for higher density, walkable communities, evaluating reductions in parking and setback requirements made through amending provisions for planned unit developments (PUDs) and other code sections.
■				Provide incentives for energy-efficient development.
	■			Work with McKinley County to develop extraterritorial planning, plating and zoning.
■				Budget for and conduct an update of the Land Development Standards to be consistent with the updated Growth Management Master Plan.
Transportation				
■				Update the Gallup Transportation Master Plan to be consistent with the Growth Management Master Plan
■				Create a transportation committee/task force to study transportation issues, and advise the city on key transportation initiatives, such as 2nd/3rd, Allison, traffic-calming, sidewalk building, and input into the ICIP.
■				Move transit providers, including Greyhound, back to the Multi-Modal and Cultural Center. Realign Multi-Modal Center use with original legislative intent.
■				Consider metered parking in conjunction with on-street parking.
■				Develop Gallup Express bus stops for scheduled routes, including bus shelters, benches and trash receptacles (ADA compliant and senior-friendly).

Time Frame				Action
Short Term (1-2 Years)	Intermediate (3-5 Years)	Long Term (>5 Years)	Ongoing	
	■			Install one or more mid-block crossings on US 66 downtown.
	■			Develop a landscaped median on East and West 66, replacing continuous turn lanes (phased project).
	■			Create additional on-street parking on US 66 downtown.
	■			Set a goal for project budgets and schedules for accruing funding to complete them (e.g., begin budgeting in 2010 for a project start in 2020)
		■		Build A 2nd and 3rd Street underpass beneath the railroad, close 2nd and 3rd Streets at the railroad, or create a quiet zone like the quiet zone in Milan.
			■	Create bicycle lanes, trails and routes, targeting 0.75 linear mile per year. Consider methods such as a raised bike lane or mini-curb to separate motorized vehicles from bicycles on heavily traveled routes.
			■	Build missing sidewalk links, targeting 0.5 linear mile per year.
		■		Link Gallup to Red Rock Park through an alternate route north of the railroad.
Urban Design				
■				Develop a memorandum of understanding between the City and the Business Improvement District (BID) that clearly defines the current baseline services required of the City.
■				Establish a public art consortium through the BID to recommend additional public art in the right-of-way.
■				Participate in joint improvement projects with the downtown BID.
■				Hold a public referendum on an indoor arena, due to its cost. If the public supports it, the City should move forward with the project.
	■			Establish an incentive program for developers to renovate vacant downtown historic buildings into live/work units.
		■		Take first steps toward activating the US 491 redevelopment organization, and work with property owners.
		■		Retrofit or build a new downtown conference/convention center.

Time Frame				Action
Short Term (1-2 Years)	Intermediate (3-5 Years)	Long Term (>5 Years)	Ongoing	
Economic Development				
■				Update LEDA ordinance to enable public donation for MRA projects and farmer's markets, enabled in the 2013 statute amendment.
■				Adopt criteria for the review of LEDA applications consistent with the Growth Management Master Plan.
	■			Consider collecting a local 1/4 cent option to the Gross Receipts Tax to fund LEDA.
■				Coordinate with McKinley County to promote and serve large-scale developments creating economic diversification and well-paying jobs.
	■			Adopt and administer a film ordinance to promote and guide film production in Gallup.
■				Conduct a feasibility study for a medical cluster development, led by Greater Gallup Economic Development Corporation.
				Create an independent economic development organization for business recruitment and retention in Gallup and McKinley County that focuses on tourism, trade, and travel sectors.
				Periodically update Gallup's Economic Development Plan.
			■	Work with Indian Health Service on hospital relocation and redevelopment of the old hospital.
	■			Develop a "Gallup Brand" identity for wide local use.
	■			Encourage federal and state legislators to move the new hospital project forward. Develop a community coalition that includes Navajo Chapter support.
■				Support GGEDC promotion of targeted business development in the technology sector, and industrial and warehouse development/job creation.
■				Explore the use of abandoned buildings like the old hospital as housing resource or dorms for UNM.
			■	Develop a strong emphasis on the importance of keeping dollars local.
			■	Support merchant efforts to educate the public about the value of dollars spent locally and how they can improve infrastructure and generate a vibrant, economically sound city.

Time Frame				Action
Short Term (1-2 Years)	Intermediate (3-5 Years)	Long Term (>5 Years)	Ongoing	
			■	“Quality of Life” is fine, but focus more on “ <i>Quality of Place</i> ” relative to positive economic development. Improve through beautification, recreation, and business development with increased focus on creating more variety for consumers.
			■	Support byway development on Route 66 and Trail of the Ancients for tourism revenue
			■	Develop a more positive attitude through stronger public/public and public/private partnerships.
Trails and Open Space				
	■			Establish other dedicated funding for trails and open space, including a share of lodgers tax revenue.
			■	Work with schools, teachers, coaches and other physical education instructors to use and/or promote use of trails, Safe Routes to School, and open space venues.
			■	Advertise what Gallup has to offer with its trail system, including improving health.
	■			Conduct a summit to select an option for setting up a joint trails and open space organization.
			■	Expand the trail system in accordance with a priority/phasing plan.
			■	Acquire land or easements for trails and open space components.
			■	Publish and distribute maps of trails and the open space system.
			■	Strengthen Adventure Gallup & Beyond and tourism opportunities.
Housing				
■				Expand community members' participation in the Certified Homeownership Counseling Program to increase financial literacy in and around Gallup.
■				Collaborate with Gallup-McKinley County Schools, local lenders, NWNMCOG, and nonprofit agencies to provide information about financial literacy and credit needed for homeownership.
■				Establish a program to demolish derelict houses and develop replacement housing. Help with cost to property owners to demolish houses.

Time Frame				Action
Short Term (1-2 Years)	Intermediate (3-5 Years)	Long Term (>5 Years)	Ongoing	
■				Expand the weatherization assistance program operated by the designated state weatherization providers .
■				Seek funding assistance to develop infrastructure for selected, project-specific new housing.
■				Seek funding assistance to rehabilitate rental and homeowner housing for low-income households.
■				Support development and guide new affordable housing in or near urban centers/areas with significant urban services, including support for goals of the Gallup Housing Authority and other affordable housing programs. Largely done.
	■			Support mixed use (commercial/residential) projects in urban centers. – Talk to federal funding agencies and Indian tribes regarding financing options, also set budgets for future building.
	■			Study establishing a housing trust to invest in affordable housing.
			■	Provide incentives for development of undeveloped land vacant in target areas that are suitable for development.
			■	Encourage market-rate housing development that relieves rental housing shortage (including mixed income, and senior retirement housing/group homes).
			■	Identify additional federal grants and loans; work with tribes to provide housing for tribal members wanting to move to Gallup.
			■	Create incentives for apartment development serving low and extremely low income residents.
			■	Actively solicit one or more property owners to develop mixed-income downtown housing in second floor space or as new in-fill development.
			■	Coordinate city infrastructure projects (and where appropriate, matching funds), facilitate zoning and building permits with, and provide letters of support to Gallup Housing Authority for building additional public housing.
■				Engage professional services with local or regional housing authority or another service provider to conduct financial literacy, homebuyer educational outreach and other programs.

Time Frame				Action
Short Term (1-2 Years)	Intermediate (3-5 Years)	Long Term (>5 Years)	Ongoing	
			■	Support local community groups and civic organizations that conduct neighborhood clean-ups, beautification and other beneficial efforts.
Facilities and Parks				
■				Complete an asset management plan or facility master plan for all City facilities.
			■	Implement improvements projects as prioritized in the City CIP and ICIP.
			■	Annually update the CIP and ICIP.
■				Establish City energy-efficiency goals.
■				Establish City parks adequacy standards.
■				Create a parks and recreation commission or assign responsibility to an existing board or commission; monitor cultural and recreational facilities and parks usership, and assist in public engagement for a parks master plan.
	■			Develop a funding strategy, including grant writing, user fees, bonding, optional GRT and other funding mechanisms.
■				Develop plans for and implement cultural facilities recommended in the MRA and Arts and Cultural District Plans.
Water				
■	■	■		Continue to support the Navajo-Gallup Water Supply Project, extend regional Gallup water system lines and make improvements to the water system to enable Navajo Gallup.
■				Negotiate an intergovernmental agreement with NTUA regarding the Gallup Regional Water Supply Project..
■	■			Pursue approval of G-22 waterfield development, including water rights.
		■		Develop G-22 wells, treatment and transmission pipes.
■				Seek a congressional cap at the current level of Gallup's contribution of the capital costs of the NGWS project.
■				Lobby the New Mexico legislature to mandate small water systems within the project area to use Navajo Tribal Utility Authority water to provide high quality, reliable water to all residents.
Utilities				

Time Frame				Action
Short Term (1-2 Years)	Intermediate (3-5 Years)	Long Term (>5 Years)	Ongoing	
■	■			Develop a new headworks facility for a wastewater treatment plant.
■				Evaluate the pros and cons of options for a regional wastewater treatment facility outside of Gallup.
	■			Amend the utility extension policy that requires annexation to apply to a defined area near Gallup (mapped). Outside of this area, the policy would allow the City to provide regional utility service without requiring annexation.
	■			Conduct a study of water, wastewater rates and financing to inform selection of funding mechanisms and rate structure.
■				Develop a photovoltaic electric generating field to supplement and substitute for the conventional energy supply.
■				Develop broadband fiber optic to serve major City facilities.
■				Support enhanced reliability and coverage of commercial broadband to support economic development, telemedicine and residents' needs.
		■		Expand the current system for reuse of treated effluent.
			■	Conduct regular annual clean-up of trash, weeds and graffiti.
Hazards Mitigation				
	■			Update the Emergency Operations Plan.
■				Conduct a natural hazards risk review of City facilities.
	■			Review building codes and zoning regulations to assure adequate provisions are in place to reduce the exposure to natural hazards.
■				Conduct a hazards mitigation risk review of City facilities in upcoming asset managements reviews.
	■			Publish maps showing areas with known natural hazards to inform property owners and residents.
	■			Conduct current hazards education programs to better inform property owners and residents of property owners.
	■			Develop a promotional program to encourage participation in the McKinley County CodeRED® early warning system.