

# AGENDA

## GALLUP CITY COUNCIL REGULAR MEETING TUESDAY, AUGUST 23, 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**

Regular Meeting of August 9, 2016

**D. Discussion/Action Topics**

1. Request for Street Closure for the Gallup Film Festival to be Held September 17-18, 2016 – Knifewing Segura, Gallup Film Festival
2. “Our Town” Grant Application to the National Endowment for the Arts for the Design of the Coal Avenue “Event Street” Project – Maryann Ustick, City Manager
3. Resolution No. R2016-33; Approval of Gallup MainStreet Arts and Cultural District Professional Services Agreement – Maryann Ustick, City Manager
4. Request for Lodgers Tax Funding for “Turf Wars 2” Softball Tournament – Catherine Sebold, Tourism and Marketing Manager
5. Re-Appointment of Carol Sarath, Janet Tempest and Rhonda Gishi-Chicharello to the Octavia Fellin Public Library Board – Mayor Jackie McKinney

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

6. Appointment of Jon DeYoung to the Board of Directors of the Business Improvement District – Mayor Jackie McKinney
7. Ordinance No. C2016-9; An Ordinance Regarding the Operation of Off-Highway Motor Vehicles on City Streets – George Kozeliski, City Attorney
8. Request for the Use of City Water for Construction of Reach 27.6 of the Navajo Gallup Water Supply Project – George Kozeliski, City Attorney
9. Approval of Budget Adjustment for PRC EMS Grant and Annual NM Fire Fund Award – Chief Eric Babcock, Gallup Fire Department
10. Approval of Budget Adjustment for Police Department – Patty Holland, Chief Financial Officer
11. Approval of Budget Adjustment for Animal Control – Patty Holland, Chief Financial Officer
12. Acceptance of Two Recycling And Illegal Dumping (RAID) Grants and Budget Adjustments to Reflect Grant Revenue and Expenditures – Dennis Romero, Water and Sanitation Director
13. Resolution No. R2016-34; Fiscal Year 2016-2017 New Mexico Department of Transportation Cooperative Funding Agreement – Stan Henderson, Public Works Director
14. Resolution No. R2016-35; Acceptance of Legislative Appropriation 16-A2457 for the Indian Hills Park Power & Lighting Improvement Project – Stan Henderson, Public Works Director
15. Resolution No. R2016-36; Acceptance of Legislative Appropriation 16-A2459 for the New City Skate Board Park Construction Project – Stan Henderson, Public Works Director
16. August 9, 2016 Special Municipal Election Results – Alfred Abeita, City Clerk

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

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- F. Comments by Mayor and City Councilors**
- G. Comments by City Manager and City Attorney**
- H. Motion to Adjourn**

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

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

## **Minutes**

Regular Meeting of August 9, 2016

Minutes of the Regular Meeting of the Gallup City Council, City of Gallup, New Mexico, held in the Council Chambers at Gallup City Hall, 110 West Aztec Avenue, at 4:30 p.m. on Tuesday, August 9, 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
Absent:	Fran Palochak, Councilor
Also present:	Maryann Ustick, City Manager George Kozeliski, City Attorney

Presented to the Mayor and Councilors were the Minutes of the Regular Meeting of July 26, 2016.

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

Kenneth Riege of the Comfort Suites presented coins to the Mayor and Councilors and expressed his appreciation for their support in having Gallup named as the Most Patriotic Small Town in America and designated as a Purple Heart City.

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

1. Appointment of Glen Benefield to the Gallup-McKinley County Animal Control Authority Board – Mayor Jackie McKinney

Mayor McKinney recommended the appointment of Mr. Benefield to fill the vacancy on the Board, created by the resignation of Joyce Lebeck.

Councilor Kumar made the motion to approve the appointment of Glen Benefield to the Gallup-McKinley County Animal Control Authority Board. Seconded by Councilor Landavazo. Roll call: Councilors Kumar, Landavazo, Garcia and Mayor McKinney all voted yes.

2. Budget Adjustment for Gallup Detox Center Facility – Jon DeYoung, Assistant to the City Manager

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Mr. DeYoung presented the request for a budget adjustment in the amount of \$45,600 to cover the cost of utilities and building maintenance at the Gallup Detox Center.

Discussion followed concerning the cost of utilities for the fiscal year at the detox center.

Councilor Landavazo made the motion to approve the budget adjustment for the Gallup Detox Center Facility. Seconded by Councilor Garcia. Roll call: Councilors Landavazo, Garcia, Kumar and Mayor McKinney all voted yes.

### 3. Budget Adjustment for Youth Conservation Corps – Jon DeYoung, Assistant to the City Manager

Mr. DeYoung presented the request for a budget adjustment in the amount of \$149,875.59 for the Youth Conservation Corps (YCC). The City was initially notified by the State that it would not receive any funding for YCC this fiscal year; therefore, the City did not establish a budget for YCC. After the City approved its budget, the State advised that it would provide the City with YCC funding after another community turned down the funds. Since the City does not have the matching funds in its current budget, the County was able to provide matching funds for the program in the amount of \$50,000.

Discussion followed concerning the work to be conducted during this year's YCC program. Ms. Ustick said she will provide a copy of the YCC work plan to the Mayor and Councilors.

Councilor Garcia made the motion to approve the budget adjustment for the Youth Conservation Corps. Seconded by Councilor Kumar. Roll call: Councilors Garcia, Kumar, Landavazo and Mayor McKinney all voted yes.

### 4. Approval of Budget Adjustment and Purchase of an Aerial Platform Fire Truck – Eric Babcock, Fire Chief

Chief Babcock presented the request for budget adjustment and authorization to purchase a 100-foot aerial platform fire truck in the amount of \$998,000.

Discussion followed concerning the process for selecting the fire truck, the features of the fire truck itself, the grant funding that was obtained towards the purchase of the fire truck and the City's Insurance Service Office (ISO) rating.

Councilor Landavazo made the motion to approve the budget adjustment and the purchase of an aerial platform fire truck. Seconded by Councilor Kumar. Roll call: Councilors Landavazo, Kumar, Garcia and Mayor McKinney all voted yes.

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### 5. Budget Adjustment for Municipal Court – Grant Foutz, Municipal Judge

Patty Holland, Chief Financial Officer, said the fund that is used to submit fines and fees to the State was not included in this fiscal year's budget. The fund is normally budgeted during the regular process; however, the fund was inadvertently left out this year. She requested a budget adjustment in the amount of \$75,000 which will be subsidized by fines that are collected during the year.

Discussion followed concerning the increased amount of fines and fees that are collected at Municipal Court.

Councilor Kumar made the motion to approve the budget adjustment for Municipal Court. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Landavazo and Mayor McKinney all voted yes.

### 6. Budget Adjustment for the Golf Course – Maxwell Johnson, Fox Run Golf Course

Ms. Holland said there was about \$124,000 in unexpended funds for the golf course last fiscal year that was rolled back into the General Fund. She requested a budget adjustment in the amount of \$115,000 to be used for unfunded items this fiscal year for sand, fertilizer, pro shop inventory, equipment rentals and professional contracts for the golf course.

Ms. Holland and Mr. Johnson answered questions regarding the equipment rentals and professional contracts to be funded by the proposed budget adjustment. Rather than purchasing the equipment, Mr. Johnson recommended leasing new machinery every five years, which would be more cost effective for the City.

Mayor McKinney provided an overview of the improvements being made at the golf course.

Councilor Kumar made the motion to approve the budget adjustment for the Golf Course. Seconded by Councilor Landavazo. Roll call: Councilors Kumar, Landavazo, Garcia and Mayor McKinney all voted yes.

### 7. Budget Adjustment for the Purchase of Police Vehicles – Phillip Hart, Chief of Police

Ms. Holland said the City received a legislative grant from the State in the amount of \$285,000 to purchase and equip new police vehicles. The purpose of the adjustment is

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to include the funds in the current budget in order to move forward with the purchase of the vehicles.

Councilor Garcia made the motion to approve the budget adjustment for the purchase of police vehicles. Seconded by Councilor Kumar. Roll call: Councilors Garcia, Kumar, Landavazo and Mayor McKinney all voted yes.

8. Approval of New Mexico Department of Tourism Litter Control & Beautification Grant Agreement and Budget Adjustment to Reflect Grant Revenue and Expenditures – Maryann Ustick, City Manager

Ms. Ustick said the City, along with its community partners, applied to the State Department of Tourism for the Litter Control and Beautification Grant in the amount of \$25,580. Due to the high demand for the funds, the City was awarded \$20,000. The funds will be used to improve and beautify the downtown walkway between Coal Avenue and Aztec Avenue. The City plans to hire youth next spring for litter reduction and graffiti abatement prior to the tourist season.

Councilor Landavazo made the motion to approve the New Mexico Department of Tourism Litter Control and Beautification Grant Agreement and budget adjustment to reflect the grant revenue and expenditures. Seconded by Councilor Garcia. Roll call: Councilors Landavazo, Garcia, Kumar and Mayor McKinney all voted yes.

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

Chief Babcock introduced Fire Marshal Jesus Morales as the City's new Deputy Fire Chief.

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

Councilor Garcia thanked everyone who was involved in the National Night Out event which took place on August 2, 2016. She also encouraged everyone to support the upcoming Gallup Inter-Tribal Indian Ceremonial, which will take place later in the week.

Councilor Kumar also thanked everyone for their involvement and participation in the National Night Out event. He said the 30 Days of Opera and the Freedom Ride, Flight and Cruise events were very successful. Councilor Kumar also encouraged everyone to support the Ceremonial.

Councilor Landavazo said he enjoyed the car show at the Freedom Ride, Flight and Cruise event. Unfortunately, he was not able to attend the National Night Out event due to other commitments; however, he received many positive comments from others about the event. He encouraged citizens to welcome the world to Gallup, New Mexico

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at the upcoming Ceremonial. He asked about the status of the construction project on South Second Street and if the street will be reopened in time for the Ceremonial. Ms. Ustick said the New Mexico Department of Transportation (NMDOT) will not be able to reopen Second Street in time for the Ceremonial. Ms. Ustick said the project was delayed due to rain and a waterline break that occurred last week. The project is expected to be completed at the end of the month. Councilor Landavazo encouraged everyone to continue to weave into the community, “that which is real and that which is true.”

Mayor McKinney said he has been in communication with the NMDOT as they tried everything they could to reopen Second Street in time for the Ceremonial. Since the current traffic pattern has been in existence for the past several months, he believes local residents are used to the current traffic flows and the project may not be a major inconvenience overall. Mayor McKinney said he was impressed with the National Night Out event and commended those who helped with the event. He also encouraged local residents to don their native apparel and jewelry during the upcoming Ceremonial.

**Comments by City Attorney and City Manager**

None.

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

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Jackie McKinney, Mayor

ATTEST:

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Alfred Abeita II, City Clerk

## **Discussion/Action Topic 1**

**Request for Street Closure for the Gallup Film Festival  
to be Held September 17-18, 2016**

**Knifewing Segura, Gallup Film Festival**



**CITY OF GALLUP  
EVENT · PARADE · PARKS · FILM  
COURT HOUSE SQUARE  
PERMIT CHECK LIST**

Office of the City Clerk  
P.O. Box 1270  
Gallup, New Mexico 87305  
(505) 863-1254

Profit  Non-Profit \_\_\_\_\_ Permit Number \_\_\_\_\_  
Applicant(s) Knifewing Segura  
Mailing & E-Mail Address PO Box 3027 Gallup NM 87305 zobiureach@gmail.com  
Home/Office/Cell Phone # office 505-722-8982 cell 505-409-9559  
Type of Event Film Festival Date[s] sep 16, 17, 18 Time[s] \_\_\_\_\_  
Location(s) On Coal Avenue between 2nd & 3rd street  
Parade Route N/A

**NOTE\* Obtain signatures in order shown, attach a written scope of event and provide a Certificate of Insurance for requested event. All street closures are City Council approved, 30 days in advance.**

**1. CITY POLICE DEPARTMENT: Chief Phillip Hart or Designee 863-9365**

Assigned Officer(s) ROUTINE PATROL N/A  
Police Department Fees \_\_\_\_\_ N/A  
Special Equipment/Conditions \_\_\_\_\_ N/A  
Security Plan Review \_\_\_\_\_ N/A

Approved:  Disapproved \_\_\_\_\_

Field Services Signature: [Signature] Date 8/17/16

**2. CITY FIRE DEPARTMENT: Chief Eric Babcock or Designee 722-4195**

Assigned Firefighter/EMT(s) Support only - N/A  
Special Equipment/Conditions Fill barrels with water N/A  
Fire Department Fees \_\_\_\_\_ N/A  
Site Review will verify N/A

Approved:  Disapproved \_\_\_\_\_

Fire Department Signature: [Signature] Date 8/17/2016

**3. CITY COORDINATION: Ben Welch, Community Services Coordinator 863-1275**

Single contact coordinates City of Gallup logistics and/or department requirements; Public Works, Gallup Joint Utilities, Parks, & Recreation. **NOTICE:** City of Gallup will not provide security, PA/Sound equipment, tables, chairs, tent{s}, canopies, concessionaires, bleachers, coolers, stages, port-a-potties, heavy equipment, wash basins, generators, extension cords, office equipment, printing, BBQ grills, crock-





# GFF

**GALLUP FILM FESTIVAL**  
**SEPTEMBER 16-18TH, 2016**  
**EL MORRO THEATRE | GALLUP, NEW MEXICO**

## CALL FOR ENTRIES

*Now accepting submissions for the 2016 Gallup Film Festival. Film must have been completed after January 2014. It cannot be a previous winner of Gallup Film Festival. Must be able to prove ownership and film. All Non-English films must have English subtitles.*

**DEADLINE AUGUST 16TH**

## 7 CATEGORIES

*Animation  
Documentary  
Drama Feature  
Music Video  
Short  
Youth (Ages 12-17)  
Language Preservation*

*Submit Your Film*

**Castle Furniture**  
Electronic\*Appliances\*Carpet

**RICO**  
AUTO COMPLEX  
SINCE 1919

**LAM CORPORATION**  
Architects Builders Designers  
Gallup, NM



**Richardson's**  
Trading Co. & Cash Payee



**EM GRAPHIX**  
STUDIO

**FOR MORE INFORMATION ABOUT TICKETS, SPONSORSHIP  
AND VOLUNTEER OPPORTUNITIES, VISIT:**

**GALLUPFILMFESTIVAL.COM**



## **Discussion/Action Topic 2**

**“Our Town” Grant Application to the National Endowment for the  
Arts for the Design of the Coal Avenue “Event Street” Project**

**Maryann Ustick, City Manager**



**CITY OF GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: August 23, 2016

SUBJECT: Our Town Grant Application  
DEPT. OF ORIGIN: Manager  
DATE SUBMITTED: 8/17/16  
SUBMITTED BY: Maryann Ustick, City Manager

**Summary:** The City of Gallup and GallupARTS are partnering to submit a grant application for the National Endowment for the Arts (NEA) Our Town program. This program provides dollar for dollar funding to plan and design creative placemaking projects in communities across the country. Building from the MRA/Cultural Plans, we are looking at submitting for funding to design the Coal Avenue Event Street. For this application, the City Council is being asked to consider approval of \$50,000 cash match (FY18) and application letter from the City Council. The City has employed the NWNMCOG to organize this application under their Annual Work Program.

**Fiscal Impact:** \$50,000 (FY18 – August 2017)

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

*Patty Holland*  
Finance Department

**Attachments:** See attached packet.

**Legal Review:**

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

*[Signature]*  
City Attorney

**Recommendation:** Approval of a soft commitment of \$50,000 to be re-evaluated in April 2017 (if awarded) in order to establish, if the City has this funding to match. If funds are not available due to budget constraints, we will look to scale back commitment or not accept the grant award for this project.

Approved for Submittal By:

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:	_____

# CREATIVE PLACEMAKING BY DESIGN IN OUR TOWN

Interested in working with multi-media arts and design individuals, groups, businesses, and organizations to plan, design, and enhance a creative place in Downtown Gallup.

Making downtown Gallup a vibrant place for people and artisans to live and thrive.

Downtown Gallup has been a historic arts and cultural hub.

In the last several years, Gallup has invested in itself to create a heart of activity, including:

- **ART:** Murals, Public Arts Projects, Arts Crawl Expansion, Gallup Cultural Center, & Cooperatives
- **SPACES:** Courthouse Square, Veterans Park, Outdoor Performance Stage, Playground and Walkway
- **BUSINESS:** Anchor business expansion, renovation, and façade improvements, Gallup Business Improvement District, Gallup Chamber upgrade, and new arts & cultural businesses along Coal Street and Second Street
- **ENTERTAINMENT:** El Morro Theater upgrades, 2<sup>nd</sup> Street Event Center, several new businesses with performance venues, and Gallup Farmer's Market
- **SIGNAGE:** Gateway Signs, Kiosks, Coal Street Lightning, and Billboard Campaign
- **CULTURE:** Historic trading posts, Ceremonial Association, Red Mesa Center, and Nightly Dances

Based on the recently completed Metropolitan Redevelopment Area (MRA) and Cultural Plans, the City of Gallup and GallupARTS, a local arts 501(c)3 nonprofit organization, are partnering to apply to the National Endowment for the Arts "Our Town" grant program. The concept is applying for design funding to take catalytic projects identified in these master plans to the next level of development. We are striving to apply for the maximum amount, which is capped at \$200,000. This program requires a dollar for dollar match, so we must raise \$200,000. The funding does not need to be committed until August 2017 (FY18). We are targeting investments from City, County, COG, Gallup BID, NM Mainstreet, McCune Foundation, State Legislators, NM Arts, and several others.

We need community interest, support, and ideas that could build on this success, take it to the next level, and drive this grant application.

It will take a partnership and commitment from both a local government and a 501 (c) 3 arts or culture non-profit organization to apply, support organizations, and community collaborators to assist with the program.

The grant opportunity is the OUR TOWN program through the National Endowment for the Arts (NEA);

**DUE: SEPTEMBER**

More information is available at:

<http://www.nea.gov/grants/apply/OurTown/>



NATIONAL  
ENDOWMENT  
FOR THE ARTS



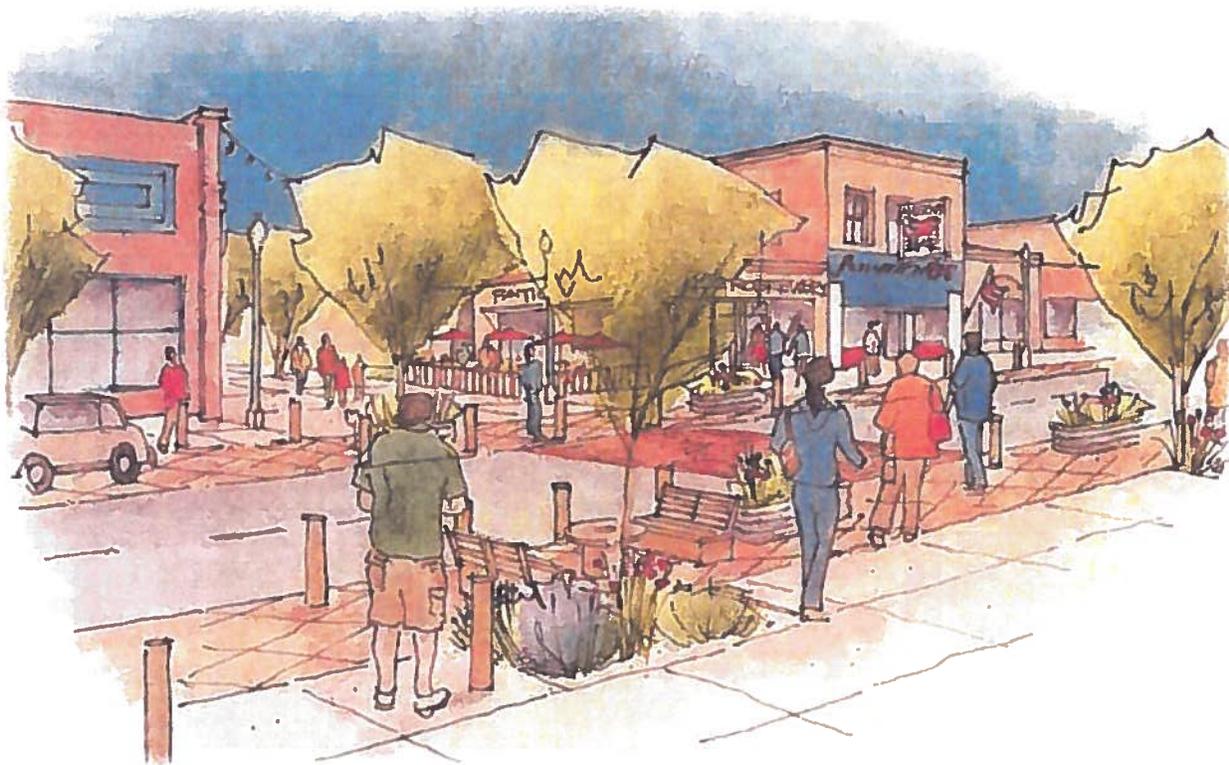


**Coal Avenue "Event Street"**

Coal Ave. between First and Third Streets is the historic main street and would be retrofitted and enhanced to increase pedestrian comfort, walkability and serve as an event space when the street is closed to traffic, such as for the Ceremonial Parade or ArtsCrawl. This segment of Coal Avenue would be a curbsless continuous surface that includes 12' wide sidewalks, and an 8' flex zone for parallel parking and/or community outdoor seating for restaurants using removable bollards, raised planters and distinctive pavement treatment. Other features also include a raised intersection at Second and Coal Ave. and specialty paving at intersections and cross walks.



## RECOMMENDATIONS



### **Coal Avenue Mid-block Crossing and Community Space**

The existing mid-block walkway needs to extend into Coal Avenue to expand this community space and create a safer pedestrian crossing across Coal Ave. This mid-block crossing would also complement the Coal Ave Event Street design as a raised curbless street and crossing. Another feature of this project is the reuse of the existing Optician shop into a Microbrewery that would open up its windowless east wall into the public space with an outdoor seating area and large door openings.





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## GRANTS

### OUR TOWN: Application Calendar

Application Deadline	Earliest Announcement of Grant Award or Rejection	Earliest Beginning Date for National Endowment for the Arts Period of performance
September 12, 2016	April 2017	August 1, 2017

You are required to use Grants.gov. See "How to Prepare and Submit an Application" for further information.

Before you apply through Grants.gov for the first time, you must be registered. Registration with Grants.gov:

- Is a multi-step process.
- Takes time; allow two weeks.
- Must be completed before you can submit your application.

**Late, ineligible, and incomplete applications will not be reviewed.**

In the event of a major emergency (e.g., a hurricane or Grants.gov technological failure), the NEA Chairman may adjust application deadlines for affected applicants. If a deadline is extended for any reason, an announcement will be posted on our website.

**If you have questions:**

**E-mail: [OT@arts.gov](mailto:OT@arts.gov)**

 **202/682-5082 Voice/T.T.Y. (Text-Telephone, a device for individuals who are deaf or hard-of-hearing.)**

 **Individuals who do not use conventional print should contact the Arts Endowment's Accessibility Office at 202/682-5532 for help in acquiring an audio recording of these guidelines.**

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## GRANTS

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### OUR TOWN: Arts Engagement, Cultural Planning, and Design Projects - Grant Program Description

Arts engagement, cultural planning, and design projects should represent the distinct character and quality of their communities, and be carried out by a nonprofit organization in partnership with a local government entity.

#### Projects

The National Endowment for the Arts plans to support a variety of projects across the country in urban and rural communities of all sizes. Please review the list of grants on our website to see the types of projects that have been funded recently through Our Town. Successful Our Town projects will impact livability by affecting community priorities such as public safety, health, blight and vacancy, environment, job creation, equity, local business development, civic participation, and/or community cohesion. The online storybook 'Exploring Our Town' has illustrative examples of Our Town grant projects and insights into doing creative placemaking for practitioners.

Projects should represent the distinct character and quality of their communities, and must reflect the following livability requirements:

- A vision for enhancing the social and/or economic livability of the community.
- The needs of existing residents and institutions in the community.
- Support for artists, design professionals, and arts organizations that integrate the arts and design into the fabric of civic life and/or community plans.
- Creative approaches to addressing community challenges or priorities.

Projects may include arts engagement, cultural planning, and design projects such as:

**Arts Engagement** Arts engagement projects support artistically excellent artistic production or practice as the focus of creative placemaking work. This includes artist-led projects that impact livability.

- Innovative programming that fosters interaction among community members, arts organizations, and artists, or activates existing cultural and community assets.

- Public art that improves public spaces and strategically reflects or shapes the physical and social character of a community.
- Artist residencies that provide artists with the opportunity to bring their creative skill sets to non-arts institutions, including residencies in government offices, businesses, or other institutions.
- Projects that provide artists professional development and access to markets and capital for business development in communities, including support for creative entrepreneurship.
- Festivals and performances that activate spaces not normally used for such purposes.

**Cultural Planning** Cultural planning projects support the development of artistically excellent local support systems necessary for creative placemaking to succeed.

- Creative asset mapping.
- Cultural district planning.
- The development of master plans or community-wide strategies for public art.
- Community workshops and plans for the integration of arts and cultural activities that address local challenges and priorities, including artist involvement and leadership in the processes that empower local residents.

**Design** Design projects that demonstrate artistic excellence while supporting the development of places where creative activities occur, or where the identity of place is created or reinforced.

- Design of public spaces, e.g., parks, plazas, landscapes, neighborhoods, districts, infrastructure, bridges, and artist-produced elements of streetscapes.
- Community engagement activities including design charrettes, design competitions, and community design workshops.
- Design of rehearsal, studio, or live/work spaces for artists, including innovative new models of artist space like co-working and shared spaces.
- Design of cultural facilities – new or adaptive reuse.

We understand that creative placemaking projects are often multi-year, large-scale initiatives. Please specify in your application which phase or phases of your project are included in your request for funding. All phases of a project—except for those for facilities noted below—are eligible for support.

Where appropriate, Our Town applications should demonstrate how the project will align with other place-based federal grant programs and policies, including, but not limited to, those from the Department of Housing and Urban Development (HUD), the Department of Transportation (DOT), the Department of Commerce, the Environmental Protection Agency (EPA), such as Consolidated Plans, Analysis of Impediments to Fair Housing Choice, Long Range Transportation Plans, and Asset Management Plans.

### **National Environmental Policy Act and/or the National Historic Preservation Act Review**

If you are recommended for a grant and your project has the potential to effect environmental or historic resources, your project may be subject to the National Environmental Policy Act (NEPA) and/or the National Historic Preservation Act (NHPA) and the National Endowment for the Arts will conduct a review of your project to ensure that it is in compliance NEPA/NHPA.

Examples of such projects include:

- An arts festival in a park.
- The commissioning and installation of an outdoor sculpture or mural, temporary or permanent.
- Design of restoration or rehabilitation of a historic structure.
- Design of a new structure in a historic district or adjacent a historic building.
- A project involving or occurring near a district, site, building, landscape, structure or object that is 50 years old or included/eligible for inclusion in the National Register of Historic Places.

If your project requires review for compliance with the NEPA/NHPA, you will be notified by the National Endowment for the Arts and need to answer additional questions about your project activities. We will conduct a review of your project activities in accordance with NEPA/NHPA. **This review may likely take up to several months and may delay your project's start date, our ability to make a grant award/our ability to release grant funds.**

To learn more about what questions you will need to answer for the review of a project impacted by the National Environmental Policy Act and/or the National Historic Preservation Act , see here.

## Required Partnerships

A key to the success of creative placemaking is involving the arts in partnership with committed governmental, nonprofit, and private sector leadership. All applications must demonstrate a partnership that will provide leadership for the project. These partnerships must involve two primary partners, as defined by these guidelines:

1. Nonprofit organization
2. Local government entity

One of these two primary partners must be a cultural (arts or design) organization. The highest ranking official of the local government is required to submit a formal statement of support designating the project as the one of the up to two applications being submitted for the local government. See "How to Prepare and Submit an Application" for more information.

Additional partners are encouraged and may include an appropriate variety of entities such as arts organizations and artists, design professionals and design centers, state level government agencies, foundations, nonprofit organizations, educational institutions, real estate developers, business leaders, community organizations, council of governments, rural planning organizations, transportation agencies, special districts, educational organizations, as well as public and governmental entities.

You may find it helpful to contact your local or regional arts agency as you begin the process within your community.

## Livability

Through Our Town projects, the Arts Endowment intends to achieve the following objective from our strategic plan: *Livability: American communities are strengthened through the arts.*

Successful Our Town projects will impact livability by affecting community priorities such as public safety, health, blight and vacancy, environment, job creation, equity, local business development, civic participation, and/or community cohesion. The anticipated long-term results for Livability projects are measurable community benefits, which might include:

- Growth in overall levels of social and civic engagement.
- New avenues for expression and creativity.
- Design-focused changes in policies, laws, and/or regulations.
- Job and/or revenue growth.
- Positive changes in migration patterns.

For resources on measuring and tracking livability impacts, see here: <https://www.arts.gov/exploring-our-town/project-process/measuring-project-results>

## OUR TOWN BASICS

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## TO APPLY: ARTS - PLANNING - DESIGN PROJECTS

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  - [Award Administration](#)
  - [How to Prepare and Submit an Application](#)
  - [Step 1: Submit the SF-424 to Grants.gov](#)
  - [Step 2: Submit Materials to NEA-GO](#)
- 

## OUR TOWN RELATED MATERIALS

- [Exploring Our Town Case Studies](#)
  - [Creative Placemaking Resources](#)
  - [Our Town Guidelines Webinars](#)
    - [How to Apply \(July 20 Archive\)](#)
    - [Tips, Tricks, and Inspiration for a Successful Project Proposal \(July 27 Archive\)](#)
  - [Sample Application Narratives](#)
  - [Past Our Town Knowledge Building Grants](#)
  - [Online Tutorial: Using the Grant Application Form \(GAF\)](#)
  - [Press](#)
- 

[Site Map](#) | [Site Policies](#) | [USA.gov](#)

400 7th Street, SW, Washington, DC 20506 202.682.5400 | [webmgr@arts.gov](mailto:webmgr@arts.gov)

## **Discussion/Action Topic 3**

Resolution No. R2016-33;  
Approval of Gallup MainStreet Arts and Cultural District  
Professional Services Agreement

Maryann Ustick, City Manager



**CITY OF  
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: August 23, 2016

SUBJECT: Gallup Mainstreet Arts & Cultural District Professional Services Agreement  
DEPT. OF ORIGIN: City Manager's Office  
DATE SUBMITTED: August 9, 2016  
SUBMITTED BY: Maryann Ustick

**Summary:** *Through this service agreement the Gallup Mainstreet Arts & Cultural District will:*

1. Provide a unified management and coordination for the revitalization and economic development activities in the central business district of Gallup.
2. Continue to develop and update a consistent promotion and marketing program for the downtown Commercial District.
3. Continue to engage community members, businesses, property owners, local government and other stakeholders in design and implementation of projects for the downtown district.
4. Continue to strengthen the existing economic assets of the downtown area while diversifying its economic base.
5. City support is essential to maintaining this State designated District.

**Fiscal Impact:** \$40,000

Reviewed By: *Patty Holland*  
Finance Department

**Attachments:** Professional Services Agreement

**Legal Review:**

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

**Recommendation:** Approve Gallup Mainstreet Arts and Cultural District Professional Services Agreement in the amount of \$40,000 for the current fiscal year.

Approved for Submittal By:

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- 33

**SUPPORTING A PUBLIC-PRIVATE ECONOMIC DEVELOPMENT  
MAINSTREET PROJECT**

WHEREAS, the City of Gallup supports the revitalization and economic re-development of its historic commercial core; and

WHEREAS, the City of Gallup desires to maintain an economically vital and vibrant town center for its residents, visitors and tourists; and

WHEREAS, the City of Gallup sees an economically healthy downtown as one of its critical assets; and

WHEREAS, the City of Gallup realizes that a sustainable town center economy contributes to the community's economic health; and

WHEREAS, the City of Gallup recognizes its traditional commercial core as representing the unique history and culture of our community; and

WHEREAS, the City of Gallup wishes to maintain a livable, walkable town center with opportunities to shop, work, live and discover recreational, cultural and heritage opportunities; and

WHEREAS, the City of Gallup wishes to pursue a partnership with a MainStreet non- profit economic re-development organization to invest in enhancing the quality of life for the community's citizens via the implementation of asset-based economic development strategies under the Main Street Four Points Approach®, and

WHEREAS, the City of Gallup partnership with the Gallup MainStreet Arts and Cultural District Corporation may leverage technical assistance and other resources through the New Mexico Economic Development Department, New Mexico MainStreet Program to support the economic re-development and revitalization of the City of Gallup MainStreet district.

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

1. The City of Gallup agrees to work with the New Mexico Economic Development Department's New Mexico MainStreet program dedicating resources and financial support to create a successful downtown economic development program through strategies established by the National Main Street Center's Main Street Four-Point Approach®.
2. The City of Gallup commits to work collaboratively with the Gallup MainStreet Arts and Cultural District Organization and the New Mexico Economic Development Department's MainStreet Program to meet the standards and principles of revitalizing and re-developing the core commercial district of the community, contracting with the local MainStreet organization

to coordinate and administer activities for the City of Gallup as set forth in biannual MOU and a separate "services contract" with the local MainStreet organization.

3. The City of Gallup commits to provide philosophical, financial, planning and coordination assistance for the Gallup MainStreet Arts and Cultural District organization to support operations and projects under the specifications of the biannual MOU and a separate "services contract" with the local MainStreet organization.

4. The term of this resolution shall be deemed effective for a one year period commencing July 1, 2016.

PASSED, ADOPTED AND APPROVED THIS 9<sup>TH</sup> DAY OF AUGUST 2016

ATTEST:

CITY OF GALLUP, MCKINLEY COUNTY

\_\_\_\_\_  
Alfred Abeita, City Clerk

BY: \_\_\_\_\_  
Jackie D. McKinney, Mayor

**GALLUP MAINSTREET ARTS & CULTURAL DISTRICT  
PROFESSIONAL SERVICES AGREEMENT**

This professional service agreement ("this Agreement") is effective July 1, 2016 between the City of Gallup, New Mexico, a municipal corporation (the "City") whose notice address is 110 W. Aztec, Gallup, New Mexico, 87301, and Gallup MainStreet Arts & Cultural District (Gallup MainStreet/ACD, the "Contractor") whose notice address is 205 W. Coal, (collectively the "Parties").

***Gallup MainStreet Arts & Cultural District - Mission and Purpose:***

The mission of the Gallup MainStreet Arts & Cultural District is to build partnerships with diverse groups and individuals to revitalize the traditional historic commercial center of Gallup, educate visitors and citizens about the historic and economic wealth of downtown Gallup, enhance the quality of the environment, including buildings, signs and landscape improvements, and develop a positive image that will attract tourism through ongoing community involvement, growth and pride.

***Activities Reflecting City Funds***

**1. SCOPE OF SERVICES**

As Part of Basic Services, the Contractor shall conduct the following activities:

- A. **Economic Transformation Strategies:** The Gallup MainStreet Arts & Cultural District program shall, in accordance with guidelines set by the National Main Street Center and the New Mexico MainStreet program, establish Economic Transformation Strategies for the district that guide implementation of economic activities, projects and outcomes within the framework of the MainStreet Four Points Approach.
  - i. In coordination with input from community residents and stakeholders, identify 2 key Economic Transformation Strategies and related economic performance outcomes for Gallup MainStreet/ACD, taking into consideration factors relevant to the district's culture, history and economic development goals of the community residents;
  - ii. Identify projects and activities under the Main Street Four Points Approach that advance the Economic Transformation Strategies and related outcomes.
  - iii. For each activity: identify tasks, budgets, funding sources, success metrics, timelines for completion and persons/teams responsible for completing each activity.
- B. **Organization** - provide unified management and coordination for the revitalization and economic development activities in the central business district of Gallup.
  - iv. Implement organizational and board development activities that enhance organizational capacity in alignment with a board-adopted capacity-building strategy.
  - v. Promote and operate programs to help the business and property owners within the designated Historic MainStreet District ("Downtown") in accordance with the New Mexico MainStreet guidelines and objectives;

- ii. Strengthen the role and relationship between the Gallup MainStreet Arts & Cultural District, Gallup MainStreet/ACD district merchants and the NM MainStreet program, related to technical assistance on Economic Vitality, Design, Organization and Promotions activities.
- iii. Work closely with the City's elected officials and professional staff, the Chamber of Commerce, the Small Business Development Center and all organizations, individuals, and entities in order to draw on resources to augment the work of its staff and board to bring projects to completion and meet common goals.
- iv. Work with and coordinate activities between community civic groups, Downtown business, financial institutions, and the government; forge new and stronger relationships with public and private agencies and the Downtown business community to ensure that teamwork would be in place for the success of the Gallup MainStreet Arts & Cultural District.
- v. Develop an annual work plan for the implementation of the Gallup Main Street Arts & Cultural District, which will identify the roles of Gallup MainStreet/ACD and collaborators, define goals and objectives, as well as establish strategies and a time line for completion. The work plan, forged through committees and City-wide effort, will be the basis for a process evaluation for the Gallup MainStreet Arts & Cultural District.
- vi. Provide a qualified, experienced Main Street Project Manager whose duties would be, among others, to provide documentation for the Gallup MainStreet Arts & Cultural District. The MainStreet Project Manager would be the principal onsite staff person responsible for coordinating all project activities and volunteers locally, as well as for representing the community regionally and nationally as appropriate and dealing with the New Mexico MainStreet staff of the State Economic Development office.

Indicators: 1) Number of businesses, civic groups, community partners and other stakeholders that collaborate/partner with in [Local] Mainstreet Project helping to achieve the downtown master plan; 2) number of businesses and volunteers that participate in promotional events and other downtown revitalization activities sponsored by Gallup MainStreet/ACD. Volunteer hours will be tracked as an indicator of broad-based support.

- C. **Promotions** - continue to develop and update a consistent promotion and marketing program for the downtown commercial district.
  - i. Initiate planning for an annual signature event, in partnership with the City of Gallup and other key community stakeholders or civic groups. Services include planning for event security, vendors, marketing/public relations, entertainment and other activities pertaining to the annual signature event.
  - ii. Coordinate and oversee the implementation of the events in the downtown district that advance outcomes of the board-adopted Economic Transformation Strategies and the Creative Economy of the downtown MainStreet/ACD District.

Indicators: 1) On a quarterly basis, produce quality marketing products that bring our brand alive and elevate the image of downtown; 2) Coordinate no more than four annual activities to attract visitors to the district. Coordinate all marketing and promotions for each activity and track all publicity received. Publicity will be tracked and quantified with a dollar value (commensurate market value); 3) Track participation in promotional events by area residents and tourists from outside the community.

- D. **Design** - continue to engage community members, businesses, property owners, local government and other stakeholders in design and implementation of projects for the downtown district, including, but not limited to improvements to building façades, street/landscaping activities, signage, lighting and the overall aesthetic look of the downtown commercial area.
- i. Provide technical assistance to property owners within Downtown for upgrading their property within the boundaries of the Gallup MainStreet/ACD District.
  - ii. Lead community efforts to support and advance at least one streetscape, beautification or infrastructure project in alignment with the board-adopted economic transformation strategies via the solicitation and/or acquisition of financial resources including capital outlay funds through the New Mexico Economic Development Departments or other set-aside funds administered through the New Mexico MainStreet Program.

Indicators: 1) Produce conceptual renderings to property owners that reflect enhanced façade improvements; 2) exhibit a historic preservation ethic encouraging appropriate building renovations and design standards for the district.

- E. **Economic Vitality** - continue to strengthen the existing economic assets of the downtown area while diversifying its economic base, including recruiting new businesses, marketing empty space, and strengthening the management capabilities of individual merchants.
- i. In alignment with the requirements established by the National Main Street Center and the New Mexico MainStreet Coordinating Program, establish two overarching Economic Transformation Strategies that guide the implementation of work plans and Main Street Four Points Project.
  - ii. Prepare and administer a survey to the Gallup MainStreet/ACD district merchants to solicit their opinion on opportunities to increase retail activity, barriers to business operations, improving consumer hospitality, and strengthening relations with the community and with the Gallup MainStreet/ACD organization.
  - iii. Support the application and implementation of economic development activities with the historic downtown MainStreet District, including (but not limited to) business

development, events, public relations efforts, shop local campaigns, building improvements, façade or curb appeal projects, streetscapes and beautification efforts.

- iv. Use NMMS reporting tools to track and communicate key statistics of jobs, new businesses, building rehabilitations, and public/private sector investments in the district and serve as an information clearing house for this type of information.

Indicators: 1) Track key statistics of jobs, new businesses, rental rate per square foot and serve as an information clearing house for this type of information; 2) number of new businesses seminars that are developed and presented each year for downtown merchants; 3) amount of additional gross receipts tax generated by downtown merchants during [Local] Mainstreet promotional events.

## 2. COMPENSATION

For Basic Services, as described hereinafter, compensation shall be provided as follows:

### A. Compensation Generally

- (1) In consideration of the requirements and expectations for MainStreet and Arts & Cultural District designations via previously submitted and approved applications for such designations, and in exchange for services rendered as specified in the scope of work above, the City shall pay to the Gallup MainStreet/ACD a sum of \$40,000.00 for the fiscal year 2017.
- (2) For each fiscal year henceforth, the Parties may agree to review and renegotiate the amount of compensation to be paid pursuant to this Agreement and amend this Agreement accordingly. Said review shall occur during the regular budget process for the City.

### B. Method of Payment

- (1) The City shall pay Contractor in equal quarterly installments of \$10,000.00. The Contractor shall submit an invoice each quarter in accordance with City procurement codes. The City shall pay the Contractor within 30 days of receiving the invoice.

### C. Other Funding

The Contractor shall diversify its funding base by collaborating with other community based organizations and shall seek funds from city, state and federal sources with additional funds being raised locally through membership, fundraising, grants, corporate sponsors and donations (or a combination thereof).

## 3. TERM OF AGREEMENT

The term of this Agreement shall be for one year, beginning on July 1, 2016 and ending on June 30, 2017 ("Term"), unless terminated pursuant to paragraphs 4,6,7,10,20, or 22 below.

#### 4. TERMINATION

This Agreement may be terminated by either party upon sixty days prior written notice to the other party. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. THE PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE OTHER LEGAL RIGHTS AND REMEDIES AFFORDED THE STATE IN SUCH CIRCUMSTANCES AS CONTRACTOR'S DEFAULT/BREACH OF CONTRACT.

#### 5. REPORTS AND AUDIT

- A. The Contractor shall maintain full and complete financial records kept in accordance with generally accepted accounting principles, which records shall be available for inspection by the City at reasonable times and upon reasonable notice.
- B. The Contractor shall submit an annual financial statement and progress report to the City designated representative and/or Governing Body of the City as requested.
- C. The Contractor shall maintain, for three (3) years, detailed time records which indicate the dates, time and nature of services rendered. These records shall be subject to inspection by the City and the State Auditor. The City shall have a right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the City to recover excessive and/or illegal payments.

#### 6. EVENTS OF DEFAULT

The Contractor shall be deemed to be in default and breach of this Agreement if the Contractor fails to perform the Basic Services of the Contractor under the Agreement and as when Basic Services are performed.

#### 7. EFFECT OF DEFAULT

In the event of any default, as set forth in the preceding section, the City may terminate this agreement and pursue its remedies at law and equity.

#### 8. INDEMNIFICATION

Contractor indemnifies City of [Name] against any claims, suits, liens, and judgments of whatever nature, including claims of contribution and/or indemnification, damage to property or other rights of any person or persons, caused by the Contractor.

#### 9. INSURANCE

The Contractor shall obtain and maintain liability insurance coverage in the amount of one million dollars (\$1,000,000) and shall name the City as an additional named insured on all insurance policies and shall provide the City with satisfactory proof of insurance.

## 10. APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Governing Body of the City for the performance of this agreement. If sufficient appropriations and authorization are not made by the Governing Body of the City, this Agreement shall terminate upon written notice being given by the City to the Contractor. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

## 11. STATUS OF CONTRACTOR

The Contractor and its agents and employees are independent contractors performing professional services for the City and are not employees of the City. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of City vehicles, or any other benefits afforded to employees of the City of [Name] as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

## 12. SUBCONTRACTING

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become or to become due under this Agreement without the prior written approval of the City.

## 13. NO THIRD PARTY BENEFICIARIES

No agreement gives no rights or benefits other than the City and the Contractor has no third party beneficiaries.

## 14. SEVERABILITY AND SURVIVAL

If any of the provisions contained in this Agreement are held for any reason to be invalid, illegal or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.

## 15. RELEASE

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the City, its officers and employees, and the City of [Local] from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the City unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

## 16. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the contractor without the prior written approval of the City.

## 17. CONFLICT OF INTEREST

The contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-17 NMSA 1978, regarding contracting with a public officer or City employee have been followed.

## 18. MERGER

This Agreement incorporates all of the agreements, covenants and understandings between the Parties concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this Agreement. No prior agreement or understanding, oral or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this Agreement.

## 19. NOTICE

The Procurements Code, Sections 13-1-28 through 12-1-199 NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

## 20. EQUAL OPPORTUNITY COMPLIANCE

The Contractor agrees to abide by all federal and state laws, rule, regulations and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity.

## 21. WORKER'S COMPENSATION COMPLIANCE

The Contractor agrees to comply with the state laws and rules applicable to workers' compensation benefits for its employees. If the Contractor fails to comply with the Workers' Compensation Act and applicable rules when required to do so, the City reserves the right to terminate this Agreement.

## 22. APPLICABLE LAW

This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of [Local].

## 23. AMENDMENT

This agreement shall not be altered, changed or amended except by instrument in writing executed by the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of \_\_\_\_\_

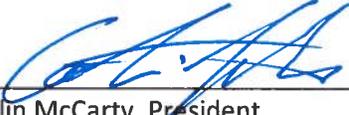
CITY:

CITY OF GALLUP

By \_\_\_\_\_  
Maryann Ustick, Gallup City Manager

CONTRACTOR:

GALLUP MAIN STREET ARTS & CULTURAL DISTRICT

By  \_\_\_\_\_  
Colin McCarty, President  
Gallup MainStreet/ACD Board of Directors

## **Discussion/Action Topic 4**

Request for Lodgers Tax Funding for  
“Turf Wars 2” Softball Tournament

Catherine Sebold, Tourism and Marketing Manager



**CITY OF  
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: August 23, 2016

SUBJECT: FY 2017 Lodgers Tax Event Funding  
DEPT. OF ORIGIN: Tourism  
DATE SUBMITTED: August 17, 2016  
SUBMITTED BY: Catherine Sebold

**Summary:** Throughout the year, the Lodgers Tax Committee recommends funding for the promotion of events to bring tourists to the City of Gallup. The funds are provided from the Lodgers Tax Funding collected and can be used for promotional purposes only.

The attached form lists the requests and recommendations for funding. Each entity funded will sign a contract for the use of the Lodgers Tax Funds as recommended by New Mexico Department of Finance and Administration (DFA)

**Fiscal Impact:**

Reviewed By: Patty Halland  
Finance Department

There is sufficient budget in place for the recommended funding. These are to be paid from the Lodgers Tax Fund.

**Attachments:** Recommended Funding

**Legal Review:**

Approved As To Form: [Signature]  
City Attorney

**Recommendation:** Staff recommends approval of the recommended funding.

Approved for Submittal By:

Catherine Sebold  
Department Director  
[Signature]  
City Manager

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COUNCIL ACTION TAKEN

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

ACCT 214-1015-411.47-05

Organization Name	Event Name	Contact	FY 2016 Award	FY 2017 Request	FY 2017 Committee Recommendation	Council Approved
Jay Denerclaw	Turf Wars 2	Jay Denerclaw	\$ 3,000.00	\$3,000	\$3,000	

\$ 3,000.00

## **Discussion/Action Topic 5**

**Re-Appointment of Carol Sarath, Janet Tempest and Rhonda Gishi-Chicharello  
to the Octavia Fellin Public Library Board**

**Mayor Jackie McKinney**

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

## **Discussion/Action Topic 6**

**Appointment of Jon DeYoung to the Board of Directors  
of the Business Improvement District**

**Mayor Jackie McKinney**

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

## **Discussion/Action Topic 7**

Ordinance No. C2016-9;  
An Ordinance Regarding the Operation of Off-Highway  
Motor Vehicles on City Streets

George Kozeliski, City Attorney



**CITY OF  
GALLUP**

**COUNCIL STAFF SUMMARY FORM**

MEETING DATE: August 23, 2016

SUBJECT: Adoption of Ordinance Regarding Operation of Off-Highway Motor Vehicles on City Streets  
DEPT. OF ORIGIN: City Attorney's Office  
DATE SUBMITTED: August 11, 2016  
SUBMITTED BY: George W. Kozeliski, City Attorney

**Summary:** City council held an open meeting on adopting and ordinance to allow off-highway vehicles on City streets as allowed by the newly enacted state law. The form of ordinance published and that is part of this packet for enactment includes all changes recommended at that public meeting.

**Financial Impact:** None

Approved: Patty Holland  
Finance Department

**Attachments:** Proposed Ordinance.

**Legal Review:** Drafted by Legal department and recommends approval.

Approved As To Form: [Signature]  
City Attorney

**Recommendation:** Adopt Ordinance to allow off-highway vehicles on city streets.

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: \_\_\_\_\_

**ORDINANCE NO. C2016-9**

**AN ORDINANCE REGARDING OPERATION OF  
OFF-HIGHWAY MOTOR VEHICLES ON CITY STREETS**

WHEREAS, the New Mexico Legislature amended the Off-Highway Motor Vehicle Act (“Act”) (Sections 66-3-1001 through 66-3-1020, NMSA 1978) during the 2016 Legislative Session permitting the operation of off-highway motor vehicles on streets; and

WHEREAS, the amendment to the Act went into effect on May 18, 2016; and

WHEREAS, Section 66-3-1011, NMSA 1978, the Act, by reference; and the Act, as amended, adopted the law which allows a municipality, by ordinance or resolution, to authorize off-highway motor vehicles to be operated on a paved street owned or controlled by the City and permits the City to legislate the use of off-highway motor vehicles in a way that fits with the community; and

WHEREAS, the area ATV/OHMV park is just outside the City limits and allows for open space and trails that create exceptional opportunities for the recreational use of off-highway vehicles, which opportunities improve the quality of life for residents and creates additional tourism and economic benefits to the City; and

WHEREAS, authorizing off-highway vehicles to be operated on certain paved streets owned or controlled by the City will increase access to, and participation in, these recreational opportunities; and

WHEREAS, the City desires to authorize off-highway vehicles to be operated on a paved street or highway owned or controlled by the City.

NOW THEREFORE BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP THAT:

A new section to the Gallup City Code which shall read as follows:

**SECTION ONE. Vehicles Allowed**

**A. Definitions.**

As used in this ordinance the following definitions shall apply, which are the same definitions as used in the Off-Highway Motor Vehicle Act of the State of New Mexico (Section 66-3-1011 NMSA 1978 comp.), and it is the intent of this ordinance to adopt any subsequent amendments made thereto and compiled therein from time to time, which are herewith adopted by reference:

B. "off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

- (1) "all-terrain vehicle", which means a motor vehicle fifty inches or less in width, having an unladen dry weight of one thousand pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;
- (2) "off-highway motorcycle", which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control;
- (3) "recreational off-highway vehicle", which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons, and having:
  - (a) a steering wheel for steering control;
  - (b) non-straddle seating;
  - (c) maximum speed capability greater than thirty-five miles per hour;
  - (d) gross vehicle weight rating no greater than one thousand seven hundred fifty pounds;
  - (e) less than eighty inches in overall width, exclusive of accessories;
  - (f) engine displacement of less than one thousand cubic centimeters; and
  - (g) identification by means of a seventeen-character vehicle identification number; or
- (5) by rule of the department, any other vehicles that may enter the market that fit the general profile of vehicles operated off the highway for recreational purposes;

## **SECTION TWO. Operation on streets or highways -- prohibited areas.**

A. A person shall not operate an off-highway motor vehicle on any:

- (1) limited access highway or freeway at any time;
- (2) paved street or highway except as provided in Subsection B or C of this section;
- (3) walking and biking trails; or
- (4) city parks.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the roadway. Off-highway motor vehicles shall yield the right of way to oncoming traffic and shall begin a crossing only when it can be executed safely and then cross in the most direct manner as close to a perpendicular angle as possible.

C. An off-highway motor vehicle may be operated on a paved street owned and controlled by the City of Gallup if:

- (1) the vehicle has one or more headlights and one or more taillights that comply with the Off-Highway Motor Vehicle Act, Sec. 66-3-1001 through 66-3-1021, NMSA 1978;
- (2) The vehicle has brakes, side mirrors on the right and left side of the driver and mufflers;
- (3) The operator has a valid driver's license, instruction permit or provisional license and an off-highway motor vehicle safety permit;

- (4) The operator is insured in compliance with the provisions of the Mandatory Financial Responsibility Act, Sec. 66-5-201 through 66-5-248, NMSA 1978; and
- (5) A person shall not operate an off-highway motor vehicle or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that comply with the Off-Highway Motor Vehicle Act.

**SECTION THREE. Speed limit.**

The speed limit for off-highway motor vehicles operated within the city shall be 45 miles per hour or the posted speed limit, whichever is less. An off-highway motor vehicle traveling on a paved street shall travel at a speed that complies with the Off-Highway Motor Vehicle Act.

**SECTION FOUR. Passengers.**

A person operating an off-highway motor vehicle shall ride only upon the permanent and regular seat attached thereto and such operator shall not carry any other person nor shall any other person ride on an off-highway vehicle unless such vehicle is designed to carry more than one person, in which event a passenger may ride upon the permanent and regular seat.

**SECTION FIVE. Obedience to traffic laws required.**

Any person operating an off-highway motor vehicle shall obey all traffic laws, rules and regulations and shall be subject to the provisions of Articles 1 through 8 of Chapter 66 NMSA 1978 [except 66-7-102.1 NMSA 1978].

**PASSED, ADOPTED AND APPROVED** on this 23rd day of August, 2016.

CITY OF GALLUP

\_\_\_\_\_  
Jackie McKinney, Mayor

ATTEST:

\_\_\_\_\_  
Alfred Abeita II, City Clerk

## **Discussion/Action Topic 8**

Request for the Use of City Water for Construction of Reach 27.6  
of the Navajo Gallup Water Supply Project

George Kozeliski, City Attorney



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: August 23, 2016

**SUBJECT:** Authorize the use of city water for construction of Navajo Gallup Reach 27.6 from North Gallup to East Gallup

**DEPT. OF ORIGIN:** City Attorney's Office

**DATE SUBMITTED:** August 11, 2016

**SUBMITTED BY:** George W. Kozeliski, City Attorney

**Summary:** City council must authorize use of city water for use outside the City limits. The Council previously approved use of city water for construction of the reach of Navajo/Gallup north of Gamerco to the new Gamerco tanks. The contractor for this new reach is requesting permission to use city water in the construction. They plan to use non-potable water from the well on Hassler Valley as much as possible, but they realize additional water will be needed because of the size of the project.

**Financial Impact:** City will obtain some income on the sale of the water

Approved: \_\_\_\_\_

*Patty Holland*  
Finance Department

**Attachments:** Email from DePauli Engineering Service.

**Legal Review:** It has been authorized on previous Navajo/Gallup pipeline projects and recommends approval.

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

*[Signature]*  
City Attorney

**Recommendation:** Authorize use of City of Gallup water for construction of Reach 27.6 of Navajo/Gallup pipeline.

Approved for Submittal By:

*[Signature]*  
Department Director

*[Signature]*  
City Manager

### CITY CLERK'S USE ONLY COUNCIL ACTION TAKEN

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

Continued To: \_\_\_\_\_  
Referred To: \_\_\_\_\_  
Denied: \_\_\_\_\_  
File: \_\_\_\_\_



George Kozeliski &lt;gkozeliski@gallupnm.gov&gt;

---

**Fwd: I need the email .. will this work?**

1 message

---

**George Kozeliski** <attorney@gallupnm.gov>

Sat, Aug 6, 2016 at 8:31 AM

To: Alfred Abeita &lt;aabeita@gallupnm.gov&gt;

Al,

Can you put this on the agenda for the 23rd meeting.

Approval of water using for construction of Reach 27.6. I will do the cover sheet.

Thanks.

George

**George Kozeliski**

City Attorney

110 West Aztec

Gallup, New Mexico 87301

(505) 863-1270

**IMPORTANT:** This message is intended for the recipient only. It may contain privileged and confidential information. If you are not the intended recipient, do not copy, use, or distribute this message and call (505) 863-1270. See Sec. 8 U.S.C. 2517. **Thank You**

----- Forwarded message -----

From: **Marc DePauli** <mdepauli@depauliengineering.com>

Date: Fri, Aug 5, 2016 at 4:46 PM

Subject: RE: I need the email .. will this work?

To: George Kozeliski &lt;attorney@gallupnm.gov&gt;

Dear Mr. Kozeliski,

Construction of NGWSP Reach 27.6 (aka Project 6 of the Gallup Regional Water System) will begin on August 15, 2016 and the construction period is 18 months long. Reach 27.6 consists of installing over 6 miles of pipeline and a large pumping plant. The contractor, TCL construction, has requested to use water from the City of Gallup's water system for Reach 27.6 construction. The City's existing source of construction water from well 13 is not adequate and treated effluent water from the City's waste water treatment plant cannot be used for potable water pipeline and facility construction. The City has allowed the use of water from the City's water system on construction of previous Reaches of the NGWSP. If you have any questions, please feel free to contact me.

**Marc DePauli, PE/PS**

DePauli Engineering &amp; Surveying, LLC

307 South 4<sup>th</sup> Street

Gallup, NM 87301

(505) 863-5440

## **Discussion/Action Topic 9**

**Approval of Budget Adjustment for PRC EMS Grant  
and Annual NM Fire Fund Award**

**Chief Eric Babcock, Gallup Fire Department**



**CITY OF  
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: August 23, 2016

SUBJECT: Budget Adjustment for PRC EMS Grant and Annual NM Fire Fund Award  
DEPT. OF ORIGIN: 10 August 2016  
DATE SUBMITTED: 10 August 2016  
SUBMITTED BY: Fire Chief Eric Babcock

**Summary: The City of Gallup Fire Dept is requesting approval of PRC Grant Funds of \$15,204.00 to be placed in account 206-2541-422-46-10 for Emergency Medical Support. In addition, request spending authority of \$383,731 from NM Fire Funds to be placed in the following accounts.**

**209-2541-422-46-20---\$318,731**

**209-2541-422-4704---\$25,000, to pay for specialized training for new 100 Ft Aerial Platform in Gallup**

**209-2541-422-48-70--\$40,000, to purchase support vehicle for fire chief as alternate command vehicle**

**Any additional funds will be rolled over to next year unless needed.**

**Fiscal Impact:**

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

*Patty Holland*  
Finance Department

Budget increase in funds 206 of \$15,204.00

Budget increase in fund 209 of \$383,731.00

Both are offset in revenue anticipated this year.

**Attachments: Award Letter from NM PRC for EMS Funds, FY 2017 Fire Protection Fund distribution letter, Copy of PRC distribution Check for \$383,731.00**

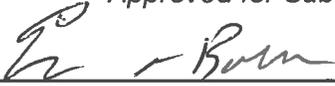
**Legal Review:**

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

*[Signature]*  
City Attorney

**Recommendation:**

Approved for Submittal By:



Department Director



City Manager

**CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN**

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

May 12, 2016

Gallup Fire Dept  
1800 South Second  
Gallup, NM 87301

Dear Eric Babcock;

This letter is to advise you that your EMS Fund Act Application for Fiscal Year 2017 (July 1, 2016 - June 30, 2017) has been reviewed by your respective EMS Regional Office and the EMS Bureau and has been **tentatively** approved in the amount of **\$15204.00**. **Be advised that this amount may still change due to appeals, corrections, or changes made by Division or the Bureau.**

**PROCEDURES FOR APPEAL OF DETERMINATION:**

Pursuant to Section 24-10A-5 NMSA 1978, any applicant (**county and/or municipality**) desiring reconsideration of the Bureau's determination as to its application for funding may appeal the determination by notifying the EMS Bureau Chief. (**Kyle Thornton**)

- (1) The appeal shall be in writing and shall be received by the Bureau Within **ten (10) working days** after notification to the applicant of the Bureau's determination.
- (2) The Bureau shall refer the appeal to the Advisory Committee for its review And recommendation. Upon receiving the Advisory Committee's Recommendation, the Secretary shall issue a final determination and send Notice to the part appealing on or before June 30 of the results of the appeal.

Please review the items proposed for purchase in your application to ensure that those items and priorities are still appropriate. **Please remember that any priority changes from your original application must be submitted to the EMS Bureau in writing for prior written approval.**

We expect warrants for this grant will be mailed out by August 31, 2016. If you have any questions, or would like to discuss your tentative award, please call me at (505) 476-8233 or email me at [Ann.Martinez1@state.nm.us](mailto:Ann.Martinez1@state.nm.us)

Sincerely,

*Ann Martinez*

Ann Martinez FF-I / EMT-I  
Fund Act Coordinator  
Cc: McKinnley County

**EMS BUREAU**

1301 Siler Road, Building F • Santa Fe, New Mexico • 87507  
(505) 476-8200 • FAX: (505) 476-2122 • [www.nmems.org](http://www.nmems.org)



# NEW MEXICO PUBLIC REGULATION COMMISSION

## COMMISSIONERS

DISTRICT 1 KAREN L. MONTOYA, VICE CHAIR  
DISTRICT 2 PATRICK H. LYONS  
DISTRICT 3 VALERIE ESPINOZA, CHAIR  
DISTRICT 4 LYNDA LOVEJOY  
DISTRICT 5 SANDY JONIS



P.O. Box 1269  
1120 Paseo de Peralta  
Santa Fe, NM 87504-1269

## CHIEF OF STAFF

Ernest D. Archuleta, P.E.

## STATE FIRE MARSHAL DIVISION

John C. Standefer, Fire Marshal  
1-800-244-6702 (In-state only)  
(505) 476-0174  
Fax: (505) 476-0100

July 25, 2016

TO : Chief Financial Officer for City of Gallup  
FOR : City of Gallup Fire Department  
FROM : JOHN C. STANDEFER, STATE FIRE MARSHAL

**SUBJECT: Fiscal Year 2017 FIRE PROTECTION FUND DISTRIBUTION**

Enclosed is *Warrant No. B2000609526* in the amount of \$383,731.00. The amount is allocated to the above identified fire department from the **FY 2017 Fire Protection Fund** distribution. Such funds are to be expended at the direction of the fire department Chief, in accordance with the provisions of the Public Purchases Act, the Fire Protection Fund Act, and the State Fire Marshal's Rules and Regulations relating to the Act.

The amount allocated covers the period from July 1, 2016, through June 30, 2017, and shall be expended only for the maintenance of the fire department, the purchase, construction, repair and operation of its fire stations, fire apparatus and equipment; the payment of insurance premiums on fire stations, substations, fire apparatus and equipment, and insurance premiums for injuries or death of firefighters as otherwise provided by law.

Enclosures

cc: DFA  
Local Government Division  
Chief, Fire Department



# State of New Mexico

Department of Finance and Administration

## Warrant Remittance

Business Unit: 43000	PUBLIC REGULATION COMMISSION	PO Box 1269	Santa Fe, NM 87504-1269			
Warrant No: B2000609526	Date: 07/20/2016	Vendor Number: 0000057155	Vendor Name: CHIEF FINANCIAL OFFICER		CITY OF GALLUP	
Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Taken	Late Charge	Paid Amount
FY 17 FPF	Jul/06/2016	00039080	383,731.00	0.00	0.00	383,731.00

City of Gallup  
 \*\*\* CUSTOMER RECEIPT \*\*\*  
 Oper: CD4CR Type: GL Drawer: 1  
 Date: 7/26/16 01 Receipt no: 8872

Description	Quantity	Amount
SG STATE GRANTS	1.00	\$383731.00

G/L account number:  
 20900003711200  
 FY 2017 FIRE ALLOTMENT

Tender detail  
 CK CHECK 2000609526 \$383731.00  
 Total tendered \$383731.00  
 Total payment \$383731.00

Trans date: 7/26/16 Time: 11:58:17

CHECK PAYMENTS CONVERTED TO A ONE-TIME  
 ACH. YOU WILL NOT RECEIVE YOUR CHECK  
 BACK. QUESTIONS PLEASE CALL 505 863-1201

CG 209 0000 371 1200  
 of: Fy 2017 Fire Allotment

Warrant Number	Date	Total Gross Amount	Total Discounts	Total Late Charges	Total Paid Amount
B2000609526	07/20/2016	\$383,731.00	\$0.00	\$0.00	\$383,731.00



THE BACK OF THIS DOCUMENT CONTAINS A WATERMARK - HOLD AT ANGLE TO VIEW

56-382  
412

# State of New Mexico

THE TREASURER OF THE STATE OF NEW MEXICO  
 WILL PAY THROUGH HIS FISCAL AGENT

Department of Finance and Administration  
 Santa Fe, New Mexico

07/20/2016 Date

VOID AFTER ONE YEAR  
 B2000609526

\$383,731.00\*\*\*

PAY THIS AMOUNT

Pay: \*\*\*\*THREE HUNDRED AND EIGHTY-THREE THOUSAND, SEVEN HUNDRED AND THIRTY-ONE AND XX / 100 DOLLAR\*\*\*\*

To: CHIEF FINANCIAL OFFICER CITY OF GALLUP  
 PO Box 1270  
 Gallup, NM 87305-1270

*Dorothy E. Rodriguez*

Secretary of Dept. of Finance and Administration

⑈ 2000609526⑈ ⑆04⑆ 203824⑆ 9600⑆ 70954⑈

## **Discussion/Action Topic 10**

Approval of Budget Adjustment for Police Department

Patty Holland, Chief Financial Officer



**CITY OF  
GALLUP**

**COUNCIL STAFF SUMMARY FORM**

**MEETING DATE:** August 23, 2016

**SUBJECT:** Budget Adjustment for Police Department  
**DEPT. OF ORIGIN:** Finance  
**DATE SUBMITTED:** August 17, 2016  
**SUBMITTED BY:** Patty Holland

**Summary:** Fund 211 is funded by a law enforcement grant to be used for training in the department. The City of Gallup is fortunate enough to have received an award this year for \$67,200 and have an additional \$8,649 of cash from last fiscal year available to utilize in the current year for a total available \$75,849.

**Fiscal Impact:**

**Reviewed By:** Patty Holland  
Finance Department

We will fully expend the cash available from grant awards during this fiscal year in the amount of \$75,849.

**Attachments:** none

**Legal Review:**

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

**Recommendation:** Staff recommends approval of the budget adjustment to recognize the grant revenue and expenditures.

Approved for Submittal By:

Patty Holland  
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**

Approval of Budget Adjustment for Animal Control

Patty Holland, Chief Financial Officer



**CITY OF  
GALLUP**

**COUNCIL STAFF SUMMARY FORM**

MEETING DATE: August 23, 2016

SUBJECT: Budget Adjustment for Animal Control  
DEPT. OF ORIGIN: Finance  
DATE SUBMITTED: August 18, 2016  
SUBMITTED BY: Patty Holland

**Summary:** The City and County have entered into a JPA for the funding of animal control. There is one employee that was not under the City of Gallup but funded by the County that we request be approved to be added to the City payroll as all funding is now thru the City of Gallup.

**Fiscal Impact:**

Reviewed By: Patty Holland  
Finance Department

No additional general funds will be needed but we request approval to increase the payroll by one animal control officer bringing the number of officers to 4 and increasing overall payroll by the cost of the additional officer in the amount of \$45,000.

**Attachments:** none

**Legal Review:**

Approved As To Form: \_\_\_\_\_  
City Attorney

**Recommendation:** Staff recommends approval of the budget adjustment and addition of one animal control officer.

Approved for Submittal By:

Patty Holland  
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 12**

**Acceptance of Two Recycling And Illegal Dumping (RAID) Grants  
and Budget Adjustments to Reflect Grant Revenue and Expenditures**

**Dennis Romero, Water and Sanitation Director**



COUNCIL STAFF SUMMARY FORM

MEETING DATE: August 23, 2016

**SUBJECT:** (2) Recycling And Illegal Dumping (RAID) New Mexico Environment Department (NMED) – Solid Waste Bureau Grant Agreements.

**DEPT. OF ORIGIN:** Utilities Engineering

**DATE SUBMITTED:** August 15, 2016

**SUBMITTED BY:** Dennis Romero

**Summary:** The City of Gallup, in cooperation with the Regional Solid Waste Authority (RSWA) and McKinley Citizens' Recycling Council (MCRC) submitted two Recycling And Illegal Dumping (RAID) grant applications to the New Mexico Environment Department (NMED) – Solid Waste Bureau during April & May 2016.

The first grant award partners with the RSWA to implement an indoor recycling collection project in city administration buildings to help instill recycling habits starting with City of Gallup employees - to purchase 6 sets of 3 indoor bins for \$8,292.60.

The second grant award is for \$5,226.08 to purchase, install and utilize a Recycling Educational Storage Depot / Shed to be used in partnership with the McKinley Citizens' Recycling Council (MCRC) to store donated recycling materials. Providing these educational materials for free to be used by MCRC outreach volunteers, area educators and to the public, diverting these recyclable items from our local landfill.

**Fiscal Impact:** The revenue from these grants will offset expenditures. Educational recycling outreach bill inserts are included within FY2017 Utilities Engineering budget – \$550 expense per insert run; including the storage shed installation labor costs are in-kind and will be coordinated with the construction crew if needed.

Reviewed By: *Patty Hooban*  
Finance Department

**Attachments:** Two RAID Grant Budgets (see attached).

**Legal Review:**

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

**Recommendation:** Staff recommends approval of these two grants, and budget adjustments to reflect grant revenue and expenditures.

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:	_____



## Project Work Plan

Goal #	Action/Task to Accomplish Goal	Funding Needed	Completion Date	Responsible Entity
<b>1</b>	Purchase Recycling Storage Depot Shed	\$5,226.08	1/31/2017	City
<b>1</b>	Install Recycling Storage Depot at Larry Brian Mitchell Center	\$0	6/30/2017	City
<b>1</b>	MCRC will hold ongoing promotional recycling events & distribute educational materials to local teachers	\$0	6/30/2017	City

## **Discussion/Action Topic 13**

Resolution No. R2016-34;  
Fiscal Year 2016-2017 New Mexico Department of Transportation  
Cooperative Funding Agreement

Stan Henderson, Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: 23 August 2016

**SUBJECT:** FY 2016-2017 NMDOT COOP FUNDING AGREEMENT  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 16 August 2016  
**SUBMITTED BY:** Stanley Henderson, Public Works Director

**Summary:** Attached as enclosure (1) for the City Council's consideration and approval is a resolution for the acceptance of the State's Cooperative Agreement for FY 2016-17. The cooperative agreement in question is provided as enclosure (2). The New Mexico Department Of Transportation has made \$130,351.00 available for the paving of City streets by the PW/Streets Department.

Note

**Fiscal Impact:**

Reviewed By: Patty Holland  
Finance Department

This State funding requires a 25% match (\$43,450.00) on the City's part for a total funding agreement of \$173,801.00. This match is budgeted within the PW/Streets Department's operations budget. State funding expires on 31 December 2017.

**Enclosures:**

- (1) Resolution R2016-34
- (2) NMDOT ltr of 21 Jun 16 w/ Cooperative Agreement #SP-6-17(175)

**Legal Review**

Approved As To Form: [Signature]  
City Attorney

**Recommendation:** Accept the State's Cooperative Agreement for FY 2016-2017, and approve the attached resolution.

Approved For Submittal By:

Stanley Henderson  
Department Director

[Signature]  
City Manager

CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN

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

RESOLUTION R2016- 34

A RESOLUTION FOR APPROVAL OF THE  
NEW MEXICO DEPARTMENT OF TRANSPORTATION'S  
COOPERATIVE AGREEMENT SP-6-17(175)

WHEREAS, the City Of Gallup deeply appreciates the annual fiscal contribution of the New Mexico Department Of Transportation to the City's transportation system and local streets through a financial grant as described in the subject Cooperative Agreement; and

WHEREAS, New Mexico Department Of Transportation is providing \$130,351.00 as 75% of the total shared amount of \$173,801.00; and

WHEREAS, the City Of Gallup has experienced adverse asphalt pavement wear, deterioration, and damage on multiple City streets; and

WHEREAS, The City Of Gallup desires to participate in the 2016-2017 Cooperative Agreement Program, and that by approving this Resolution, the City Council is affirming that desire.

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

1. This Cooperative Agreement applies to the purchase of asphalt concrete pavement material for placement by City crews on various City streets in order to maintain and repair said streets; and
2. Funds in the amount of at least \$43,450.00 will be set aside in the City's 2016-2017 fiscal budget for the required matching funds to be expended prior to 31 December 2017.

PASSED, ADOPTED, AND APPROVED THIS 23rd DAY OF AUGUST 2016.

CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO

\_\_\_\_\_  
JACKIE MCKINNEY, MAYOR

ATTEST:

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

APPROVED AS TO FORM:

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

*Enclosure (1)*



June 21, 2016

The Honorable Jackie McKinney  
Mayor, City of Gallup  
P.O. Box 1270  
Gallup, New Mexico 87305

ATTN: Mr. Stan Henderson  
Public Works Director

Re: 2016/17 Fiscal Year: Local Government Road Fund Project  
SP-6-17(175)

Dear Mr. Jackie McKinney:

The New Mexico Department of Transportation Commission at its June 2016 meeting approved the 2016/17 F.Y. Annual Cooperative Program, and allocated \$130,351.00 @ 75% For SP County Co-op state share funds for the improvements of Various City Streets Lots as delineated in your request for funds.

Enclosed are four (4) original contracts to each of the above mentioned Cooperative Agreements. Please review, and have them signed and return intact to our Milan office. Please **do not enter date on the first page** this is done in Santa Fe when agreement is finalized, also please attach a copy of the **RESOLUTION(S)** and a copy of the scope of work-**ESTIMATE** identifying the project(s). After we receive the signed contracts from you, we will submit the contract(s) for approval and send you the fully executed copy(s) at a later date.

If you should have any questions regarding the above, please contact JoAnn B. Garcia at (505) 285-3252 or Bill Santiago at (505) 285-3227.

Sincerely,

Larry Maynard  
District Engineer  
505-285-3206

**Susana Martinez**  
Governor

**Tom Church**  
Cabinet Secretary

**Commissioners**

**Ronald Schmeits**  
Chairman  
District 4

**Dr. Kenneth White**  
Secretary  
District 1

**David Sepich**  
Commissioner  
District 2

**Keith Mortensen**  
Commissioner  
District 3

**Butch Mathews**  
Commissioner  
District 5

**Jackson Gibson**  
Commissioner  
District 6

Enclosure (2)

Contract No. \_\_\_\_\_  
Vendor No. 0000054334  
Project No. SP-6-17(175)  
Control No. L600093

**COOPERATIVE AGREEMENT**

**THIS COOPERATIVE AGREEMENT** entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (“Department”) and the **CITY OF GALLUP**, (“Public Entity”).

In consideration of the covenants contained herein and pursuant to Sections 67-3-28 and 67-3-28.2 NMSA 1978 and Commission Policy No. 44-12, THE PARTIES AGREE AS FOLLOWS:

**SECTION ONE – PURPOSE:**

The purpose of this Agreement is to provide Local Government Road Funds to **City of Gallup** for the **Pavement Rehabilitation Improvements, Reconstruction**, as described in Project No. **SP-6-17(175)**, Control No. **L600093**, and the Public Entity’s resolution attached as Appendix C ("Project"). The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. This Agreement shall specify and delineate the rights and duties of the Parties hereto.

**SECTION TWO – PROJECT FUNDING BY PARTIES:**

1. The estimated total cost for the Project is **One Hundred and Seventy-Three Thousand, Eight Hundred and One Dollars (\$173,801.00)** to be funded in proportional share by the parties hereto as follows:
  - a. **Department’s** share shall be **75%** **\$130,351.00**  
**Pavement Rehabilitation Improvements, Blading & Shaping, Miscellaneous,**
  - b. The **Public Entity’s** required proportional matching  
Share shall be **25%** **\$43,450.00**  
For purpose stated above

c. **Total Project Cost**

**\$173,801.00**

2. The **Public Entity** shall pay all Project costs, which exceed the total amount of **One Hundred and Seventy-Three Thousand, Eight Hundred and One Dollars (\$173,801.00)**.

**SECTION THREE – THE PUBLIC ENTITY SHALL:**

1. Act in the capacity of lead agency for the purpose as described in Section One.
2. Submit an estimate of the Project, including work to be performed and cost to the District Engineer within thirty (30) days of execution of this Agreement, or as otherwise agreed to in writing by the Parties.
3. In the event a contract term extension is needed, provide written notice to the Department sixty (60) days prior to the expiration date identified in Section 17 below to ensure timely processing.
4. Be solely responsible for all local matching funds identified in Section Two. Certify that these matching funds have been appropriated, budget and approved for expenditure prior to execution of this Agreement.
5. Pay all costs, perform/supply or contract for labor and material, for the purpose as described in Section One and the Project estimate approved by the District Engineer.
6. In the event a contractor is hired for the Project, require the contractor to have a general liability insurance policy, with limits of liability of at least \$1,000,000 per occurrence. The Department is to be named as an additional insured on the contractor's policy and a certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance.
7. Require contractors that the Public Entity hires to perform services to defend, indemnify and hold harmless the Department from and against all suits, actions or claims of any character brought because of injury, including death or damages arising out of contractors' construction or maintenance activities pursuant to this agreement, as memorialized herein and subject to any additional permit that may be required of the contractor to perform said activities.

8. Be responsible, for performing or directing the performance, of all pre-construction activities, including, but not limited to, the following:
  - a. Utility Certification,
  - b. Drainage and storm drain design,
  - c. Geotechnical design,
  - d. Pavement design,
  - e. Environmental and archaeological clearances Certification,
  - f. Right of-way acquisition Certification,
  - g. Hazardous substance/waste site(s) contamination,
  - h. Railroad Certification,
  - i. Intelligent Transportation System (ITS) Certification
9. Cause all designs and plans to be performed under the direct supervision of a Registered New Mexico Professional Engineer, when applicable, as determined by the Department.
10. Obtain all required written agreements or permits, when applicable, from all public and private entities.
11. Allow the Department to inspect the Project to determine that the Project is being constructed in accordance with the provisions of this Agreement. Disclosures of any failure to meet such requirements and standards as determined by the Department, shall result in termination, for default, including without limitation the Public Entity's costs for funding, labor, equipment and materials.
12. Complete the project within 18 months of approval of funding by the State Transportation Commission.
13. Agree that the Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed within nine (9) months from the effective date of this agreement.
14. Within thirty (30) days of completion, provide written certification that all work under this Agreement was performed in accordance with either the New Mexico Department of Transportation's Standard Specification, Current Edition; American Public Works Association (APWA) Specifications; Department approved Public Entity established Specifications; or Department Specifications established for Local Government Road Fund

projects, by submitting the **“Project Certification of Design, Construction, and Cost,”** form, which is attached as Exhibit A.

15. Within thirty (30) days of completion, furnish the Department an **“AS BUILT Summary of Costs and Quantities”** form, which is attached as Exhibit B. The report should reflect the total cost of project as stated in **“Project Certification of Design, Construction, and Cost”** form.
16. Failure to provide the **“Project Certification of Design, Construction, and Cost”** form and an **“AS BUILT Summary of Costs and Quantities”** report within thirty (30) days of Project completion will be considered a material breach of this Agreement and Public Entity shall reimburse to the Department all funds disbursed in accordance with this agreement.
17. Maintain all facilities constructed or reconstructed with funds provided by this Agreement.

#### **SECTION FOUR – THE DEPARTMENT SHALL:**

Pay project funds as identified in Section Two, Paragraph 1a, to the Public Entity in a single lump sum payment after:

1. Receipt of a Notice of Award and Notice to Proceed and,
2. Verification of available Local Government Road Funds and Public Entity’s local matching funds identified in Section Two, Paragraph 1b.

#### **SECTION FIVE – BOTH PARTIES AGREE:**

1. Upon termination of this Agreement any remaining property, materials, or equipment belonging to the Department shall be accounted for and disposed of by the Public Entity as directed by the Department.
2. That no money in the Local Government Road Fund shall be used by the Department to administer any program, and no entity receiving a distribution pursuant to a program requiring matching funds shall use another distribution made pursuant to NMSA 1978 Section 67-3-28.2, to meet the match required.
3. That the provisions of the Local Government Road Fund Project Handbook (Current Edition) and any amendments thereto, are incorporated herein by reference and shall control the

contractual rights and obligations of the parties unless in conflict with the specific terms expressed in this Agreement or any amendments thereto.

**SECTION SIX – THIRD PARTY BENEFICIARY CLAUSE:**

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to a person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

**SECTION SEVEN – PROJECT RESPONSIBILITY:**

The improvements proposed in Section One of this Agreement shall not be under the jurisdiction and control of the Department.

**SECTION EIGHT – JURISDICTION:**

By reason of the Department's participation in the funding of this Project, the Department is not incorporating this Project into the state highway system, nor is the Department assuming any maintenance or user responsibility of liability for participation on this project.

**SECTION NINE – NEW MEXICO TORT CLAIMS ACT:**

Each party shall be responsible for liability arising from personal injury or damage to person and property occasioned by its own agents or employees in the performance of this Agreement, subject in all cases to the immunities and limitations of the New Mexico Tort Claims Act (Section 41-4-1, et seq., NMSA 1978). This paragraph is intended only to define the liabilities between the parties hereto and is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

The Public Entity and its "employees" as defined in the New Mexico Tort Claims Act, and the Department and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability

pursuant to law. No provision in this Agreement modifies and/or waives any provision of the New Mexico Tort Claims Act.

**SECTION TEN – EQUAL OPPORTUNITY COMPLIANCE:**

The Public Entity agrees to abide by all applicable Federal and State Laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the Public Entity agrees to assure that no person in the United States shall, on the grounds of race, color, national origin, sex, sexual preference, age or disability, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Public Entity is found to be not in compliance with these requirements during the life of this Agreement, the Public Entity agrees to take appropriate steps to correct these deficiencies.

**SECTION ELEVEN –LEGAL COMPLIANCE**

The Public Entity shall comply with all applicable federal, state, local, and Department laws, regulations and policies in the performance of this Agreement, including , but not limited to laws governing civil right, equal opportunity compliance, environmental issue, workplace safety, employer-employee relations and all other laws governing operations of the workplace, including laws and regulations hereafter enacted. The Public Entity shall ensure that the requirements of this compliance are made a part of each subcontract on this Project at all tiers.

**SECTION TWELVE – PUBLIC ENTITY'S PRIOR COSTS:**

Any costs incurred by the Public Entity prior to this Agreement are not eligible for reimbursement and will not be included in the amount to be disbursed as agreed upon.

**SECTION THIRTEEN – ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:**

There shall be strict accountability for all receipts and disbursements relating hereto. The Public Entity shall maintain all records and documents relative to the Project for a minimum of five years

after completion of the Project. The Public Entity shall furnish the Department and State Auditor, upon demand, any and all such records relevant to this Agreement. If an audit finding determines that specific funding was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense supported by such insufficient documentation shall be reimbursed to the Department within thirty days.

**SECTION FOURTEEN – DEPARTMENT'S AUTHORIZATION OF EXPENDITURES:**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, for performance of this Agreement. The Department is expressly not committed to expenditure of any funds until such time as they are budgeted, appropriated by the legislature, and approved for expenditure. The Department's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

**SECTION FIFTEEN – UNEXPENDED, UNENCUMBERED PROJECT BALANCES:**

Any unexpended or unencumbered balance from the Local Government Road Fund appropriated for this project shall revert to the Department. These balances, if any, shall be reimbursed to the Department within thirty- (30) days of project completion or expiration of this Agreement, whichever occurs first.

**SECTION SIXTEEN – TERMS OF THIS AGREEMENT:**

This Agreement constitutes the entire Agreement between the parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document or its amendments, is not part of this Agreement and not enforceable pursuant to this Agreement. Performance of all duties and obligations herein shall conform with and shall not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

**SECTION SEVENTEEN – TERM:**

This Agreement becomes effective upon signature of all Parties. This Agreement terminates on December 31, 2017. In the event a contract term extension is needed, the Public Entity shall provide

written notice to the Department sixty (60) days prior to the expiration date to ensure timely processing of an Amendment.

**SECTION EIGHTEEN – TERMINATION:**

1. If the Public Entity fails to comply with any provision of this Agreement, the Department may terminate this Agreement, by providing 30 days written notice.
2. The Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed within nine months from the effective date of this agreement.
3. If sufficient appropriations and authorizations are not made by the Legislature, this Agreement may terminate immediately upon written notice of the Department to the Public Entity.
4. Neither party shall have any obligation after said date of termination, except as stated in Sections Five, Seven and Eight. The Public Entity agrees to reimburse to the Department all unexpended Department funds disbursed in accordance with this Agreement.

**SECTION NINETEEN – SCOPE OF AGREEMENT:**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**SECTION TWENTY – SEVERABILITY:**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

**SECTION TWENTY-ONE – APPLICABLE LAW:**

The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1(G) NMSA 1978.

**SECTION TWENTY-TWO – AMENDMENT:**

This Agreement shall not be altered, modified, or amended except by an instrument in writing and executed by the parties hereto.

IN WITNESS WHEREOF, the Parties have set their hands and seals this day and year set forth below.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Cabinet Secretary or Designee

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

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Assistant General Counsel

**CITY OF GALLUP**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
MAYOR

**ATTESTED**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
CITY OF GALLUP CLERK

**EXHIBIT A  
PROJECT CERTIFICATION OF  
DESIGN, CONSTRUCTION, AND COST**

TO: New Mexico Department of Transportation  
District \_\_\_\_\_ LGRF Coordinator

Cooperative Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_  
Joint Powers Agreement No. \_\_\_\_\_ Control No. \_\_\_\_\_

Entity: \_\_\_\_\_

Scope of Work (Including Routes and Termini):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I, the undersigned, in my capacity as \_\_\_\_\_ of \_\_\_\_\_  
state that:

1. The design is in compliance with all state laws, rules, regulations, and local ordinances and was performed in accordance with the provisions set forth in this agreement and in the Local Government Road Fund Project Handbook (Current Edition);
2. Construction of the project was performed in accordance with standards and specifications set forth in:

\_\_\_\_\_ and completed on \_\_\_\_\_, 20\_\_\_\_; and

3. That the total project cost of \_\_\_\_\_, with New Mexico Department of Transportation 75% share of \_\_\_\_\_ and the **Public Entity** share of \_\_\_\_\_ (as submitted in attached "As Built Summary of Costs and Quantities") is accurate, legitimate, and appropriate for the project.

\_\_\_\_\_  
Name Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



## **Discussion/Action Topic 14**

Resolution No. R2016-35;  
Acceptance of Legislative Appropriation 16-A2457 for the  
Indian Hills Park Power & Lighting Improvement Project

Stan Henderson, Public Works Director



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

**MEETING DATE: 23 August 2016**

**SUBJECT:** LEGISLATIVE APPROPRIATION 16-A2457 ACCEPTANCE FOR INDIAN HILLS PARK POWER & LIGHTING IMPROVEMENT PROJECT  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 16 August 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 2016 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 2020.

Funding in question will be used for engineering costs and preparing a project estimate for future construction funding. To increase funding flexibility and phasing of costs as needed, Staff will focus the engineering planning and design on three park issues:

1. Upgrade park power distribution system;
2. Improve parking lot lighting; and
3. Improve ball field lighting.

**Enclosures:** (1) NMDFA Fund 89200 Capital Appropriation Project Agreement (16-A2457)  
(2) Resolution #2016-36

**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:

v/k Stanley Henderson  
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 2016, Chapter 81, Section 22, Para. 132 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:

**16-A2457      \$50,000.00      Appropriation Reversion Date: 30-JUN-20**  
**Laws of 2016, Chapter 81, Section 22, Paragraph 132, fifty thousand dollars (\$50,000) to plan, design and construct improvements to power distribution and lighting in Indian Hills 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")<sup>[1]</sup>, 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<sup>[2]</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement;

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

[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: P.O. Box 1270, 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, 2020**, 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, which ever first occurs.

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

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

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

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

(i) The Grantee must submit one original and one copy of each Request for Payment; and

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

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

**B. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum of 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: City of Gallup  
 B. Address: P.O. Box 1270  
Complete Mailing, including Suite, if applicable  
Gallup, NM 87301  
City State Zip  
 C. Phone No: (505) 863-1290  
 D. Grant No: 16-A2457  
 E. Project Title: Plan, design, construct improvements to power and lighting in Indian Hills Park  
 F. Grant Expiration Date: 30-Jun-20

**II. Payment Computation**

A. Grant Amount: \$50,000.00  
 B. AIPP Amount (If Applicable) \$0.00  
 C. Funds Requested to Date: \_\_\_\_\_  
 D. Amount Requested this Payment: \_\_\_\_\_  
 E. Grant Balance: \_\_\_\_\_  
 F.  GF  GOB  STB (attach wire if first 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

\_\_\_\_\_  
 Printed Name

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

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

SWORN TO AND SUBSCRIBED

SWORN TO AND SUBSCRIBED

before me on this \_\_\_\_\_ day

before me on this \_\_\_\_\_ day

of \_\_\_\_\_, 20\_\_\_\_

of \_\_\_\_\_, 20\_\_\_\_

Notary Public \_\_\_\_\_

Notary Public \_\_\_\_\_

My Commission expires \_\_\_\_\_

My Commission expires \_\_\_\_\_

**(DFA/Local Government Division Use Only)**

Vendor Code: \_\_\_\_\_

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

Loc No.: \_\_\_\_\_

Division Fiscal Officer	Date
I certify that the Local Government financial and vendor file information agree with the above submitted information.	

Division Project Manager	Date
I certify that the Local Government 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:** Jeanette Fortney / City of Gallup

**FROM: Department Representative:** Scott Wright

**SUBJECT: Notice of Obligation to Reimburse Grantee  
Project Number: 16-A2457**

As the designated representative of the Department for the Grant Agreement number 16-A2457 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: \$50,000.00  
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: Scott Wright

Title: Project Manager

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

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

RESOLUTION R2016- 36

A RESOLUTION TO THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION  
FOR THE CITY OF GALLUP'S ACCEPTANCE OF STATE APPROPRIATION ID #16A-2457

WHEREAS, the City of Gallup, NM was appropriated \$50,000 "to plan, design, and construct improvements to power distribution and lighting in Indian Hills Park" within the City Of Gallup, NM by the 2016 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 23rd day of August 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

Enclosure (2)

## **Discussion/Action Topic 15**

Resolution No. R2016-36;  
Acceptance of Legislative Appropriation 16-A2459 for the  
New City Skate Board Park Construction Project

Stan Henderson, Public Works Director



# CITY OF GALLUP

## COUNCIL STAFF SUMMARY FORM

MEETING DATE: 23 August 2016

**SUBJECT:** LEGISLATIVE APPROPRIATION 16-A2459 ACCEPTANCE FOR  
NEW CITY SKATE BOARD PARK CONSTRUCTION PROJECT  
**DEPT. OF ORIGIN:** Public Works/City Engineering  
**DATE SUBMITTED:** 16 August 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 2016 State reappropriation in the amount of \$195,000 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 2020.

There is still a project shortfall of over \$143,225,82 for construction. (See enclosure (3) for the current project budget.)

**Enclosures:** (1) NMDFA Fund 89200 Capital Appropriation Project Agreement (16-A2457)  
(2) Resolution #2016-35  
(3) Project Budget Estimate of 08/16/16

**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:

VR   
\_\_\_\_\_  
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.:

\_\_\_\_\_

\_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**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 2016, Chapter 81, Section 22, Para. 134 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:

**16-A2459      \$195,000.00      Appropriation Reversion Date: 30-JUN-20**  
**Laws of 2016, Chapter 81, Section 22, Paragraph 134, one hundred ninety-five thousand dollars (\$195,000) to acquire property for and to plan, design and construct a skate board park in Gallup in McKinley county;**

The Grantee's total reimbursements shall not exceed the appropriation amount One Hundred Ninety-Five Thousand Dollars (**\$195,000.00**) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>[1]</sup>, if applicable, Zero Dollars (**\$0.00**), which equals One Hundred Ninety-Five Thousand Dollars (**\$195,000.00**) (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<sup>[2]</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

[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: P.O. Box 1270, 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, 2020**, 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, which ever first occurs.

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

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

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

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

(i) The Grantee must submit one original and one copy of each Request for Payment; and

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

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

#### **B. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum of 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]

IN WITNESS WHEREOF, the Grantee and the Division do hereby execute this Grant Agreement as of the date of the first above written.

THIS GRANT AGREEMENT has been approved by:

City of Gallup

Signature of Official with Authority to Bind Grantee

Date

(Type or Print Name)

STATE OF NEW MEXICO )
)ss
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,
by \_\_\_\_\_

seal \_\_\_\_\_
Notary Public

My Commission Expires: \_\_\_\_\_

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

By: \_\_\_\_\_
Rick Lopez, Director

Date \_\_\_\_\_

STATE OF NEW MEXICO )
)ss
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,
by \_\_\_\_\_

seal \_\_\_\_\_
Notary Public

My Commission Expires: \_\_\_\_\_

**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  
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 3**

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

**TO: Grantee Representative:** Jeanette Fortney / City of Gallup

**FROM: Department Representative:** Scott Wright

**SUBJECT: Notice of Obligation to Reimburse Grantee**  
**Project Number: 16-A2459**

As the designated representative of the Department for the Grant Agreement number 16-A2459 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: \$195,000.00  
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: Scott Wright

Title: Project Manager

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

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

RESOLUTION R2016- 35

A RESOLUTION TO THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION  
FOR THE CITY OF GALLUP'S ACCEPTANCE OF STATE APPROPRIATION ID #16A-2457

WHEREAS, the City of Gallup, NM was appropriated \$195,000 "to acquire property for, plan, design, and construct a skate board park" in the City Of Gallup, NM by the 2016 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 23rd day of August 2016.

\_\_\_\_\_  
Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

Enclosure (2)

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

Line Item Description	Weight	Estimated Amounts	SubTotals	Comments
<b>PROJECT REVENUE</b>			<b>\$ 414,230.75</b>	
City General Funds		\$ 14,230.75		PW/CE 101-1532-474-45.30. For Additional Cnstr Mgmnt Services.
City Enterprise Funds				
City Bond Funds				
<b>Legislative Funding</b>				
2014 Legislature Appropriation (#14-1995)		\$ 40,000.00		For A/E Design n Cnstr Mgmnt Costs.
2015 Legislature Reauthorization (#15-1134)		\$ 50,000.00		Reallocated Funds
2016 Legislature Appropriation (#16-A2459)		\$ 195,000.00		For Construction
<b>Other Public Funding</b>				
Business Improvement District				
Clean n Beautiful Funding				
<b>Private Sector Funding</b>				
South West Indian Foundation		\$ 100,000.00		Verbal Commitment
Councilor Kumar		\$ 5,000.00		Verbal Commitment
Tony Hawke Foundation		\$ 10,000.00		
Other Private Contributions				
<b>PROJECT EXPENDITURES</b>				
<b>Project Planning</b>	<b>0.9746%</b>		<b>\$ 4,459.00</b>	PO #080683 dtd 12/02/14
Feasibility Study		\$ 4,459.00		MWRM proposal dtd 10/31/14. For site selection.
Property/Land Acquisition				
ROW/Easement Acquisition				
NM Gross Receipt Tax	7.0000%			
<b>Project Development</b>	<b>5.6078%</b>		<b>\$ 25,657.53</b>	PO #080683 dtd 12/02/14
Independent Cost Estimate				
A/E Design		\$ 19,548.00		MWRM proposal dtd 10/31/14.
A/E Changes				
Project Certifications				
Special Reports				
Public Participation		\$ 4,431.00		MWRM proposal dtd 10/31/14.
Material Submittal Review				
NM Gross Receipt Tax	7.0000%	\$ 1,678.53		
<b>Project Delivery</b>	<b>5.2581%</b>		<b>\$ 24,057.18</b>	PO #080683 dtd 12/02/14
Independent Cost Estimate				
Contract/Grant Administration		\$ 6,223.00		MWRM proposal dtd 10/31/14.
Bid Assistance		\$ 2,711.40		MWRM proposal dtd 10/31/14.
Quality Assurance		\$ 7,276.50		MWRM proposal dtd 03/15/16.
Material Testing		\$ 6,000.00		MWRM proposal dtd 03/15/16.
NM Gross Receipt Tax	8.3125%	\$ 1,846.28		
<b>Construction</b>	<b>100.0000%</b>		<b>\$ 457,529.87</b>	\$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		
<b>Construction Changes</b>	<b>0.0000%</b>		<b>\$ -</b>	Construction Change Orders.
1				
2				
NM Gross Receipt Tax				
<b>Project Contingency</b>	<b>10.0000%</b>	<b>\$ 45,752.99</b>	<b>\$ 45,752.99</b>	
<b>Total Estimated Costs</b>			<b>\$ 557,456.57</b>	
<b>PROJECT BALANCE</b>			<b>\$ (143,225.82)</b>	

Enclosure (3)

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

NOTE: Weights (%) above are based on the estimated/awarded construction cost as 100%.

123 Soft Number (Estimate)

123 Hard Number (PO or Contract)

**PROJECT BUDGET SUMMARY:**

Indirect Costs	5.8855%		\$ 30,116.53	
= Project Planning	0.8714%	\$ 4,459.00		Architect/Engineer
= Project Development	5.0141%	\$ 25,657.53		Architect/Engineer
Direct Costs	94.1145%		\$ 481,587.05	
= Project Delivery	4.7014%	\$ 24,057.18		Architect/Engineer
= Construction Award	89.4131%	\$ 457,529.87		Construction Contractor
= Construction Changes	0.0000%	\$ -		Construction Contractor
Total Project Costs	100.0000%	\$ 511,703.58	\$ 511,703.58	
= Contingency		\$ 45,752.99		
		\$ 557,456.57		CHECKSUM
Architect/Engineer	10.5869%	\$ 54,173.71		
Construction Contractor	89.4131%	\$ 457,529.87		
	100.0000%	\$ 511,703.58		CHECKSUM

NOTE: Weights (%) above are based on the total project cost (w/out project contingency) as 100%.

## **Discussion/Action Topic 16**

August 9, 2016 Special Municipal Election Results

Alfred Abeita, City Clerk



**CITY OF  
GALLUP**

**COUNCIL STAFF SUMMARY FORM**

MEETING DATE: August 23, 2016

SUBJECT: August 9, 2016 Special Municipal Election Results  
DEPT. OF ORIGIN: City Clerk  
DATE SUBMITTED: August 11, 2016  
SUBMITTED BY: Alfred Abeita II, City Clerk

**Summary:**

The official canvass of the August 9, 2016 Special Municipal Election was conducted on Thursday, August 11, 2016 before Municipal Judge Grant Foutz. Pursuant to §3-8-53-C(4) NMSA 1978, submitted for inclusion in the official Minute Book of the City is the attached Certificate of Canvass of the election.

**Fiscal Impact:**

Final costs of the election to be determined.

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

*Patty Holland*  
Finance Department

**Attachments:** Certificate of Canvass.

**Legal Review:**

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

*Alfred Abeita II*  
City Attorney

**Recommendation:** Staff recommends the ratification of the election results.

Approved for Submittal By: \_\_\_\_\_

*Alfred Abeita II*  
Department Director

\_\_\_\_\_

*Alfred Abeita II*  
City Manager

**CITY CLERK'S USE ONLY  
COUNCIL ACTION TAKEN**

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

**CITY OF GALLUP, NEW MEXICO  
 CERTIFICATE OF CANVASS  
 SPECIAL MUNICIPAL ELECTION - AUGUST 9, 2016**

QUESTIONS	SOUTHSIDE FIRE STATION #1	NORTHSIDE FIRE STATION #2	EASTSIDE FIRE STATION #3	WESTSIDE FIRE STATION #4	HAROLD RUNNELS ATHLETIC COMPLEX	MCKINLEY COUNTY COURTHOUSE ROTUNDA	ABSENTEE VOTING Hand-Tally	EARLY VOTING	TOTALS	PERCENTAGE
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<b>TOTAL BALLOTS CAST</b>	123	46	151	32	31	136	30	232	<b>781</b>	
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<b>GENERAL OBLIGATION BOND QUESTION</b>										
FOR General Obligation Bonds	97	29	124	25	24	89	19	172	579	75.98%
AGAINST General Obligation Bonds	23	17	24	7	7	41	11	53	183	24.02%
<b>TOTAL COUNT - QUESTION 1</b>									<b>762</b>	

<b>PACKAGE LIQUOR SALES ADVISORY REFERENDUM QUESTION</b>										
FOR	83	25	119	25	21	87	22	180	562	72.80%
AGAINST	38	21	30	7	10	48	8	48	210	27.20%
<b>TOTAL COUNT - QUESTION 2</b>									<b>772</b>	

<b>SINGLE-STREAM CURBSIDE RECYCLING ADVISORY REFERENDUM QUESTION</b>										
FOR	62	9	90	13	13	67	9	126	389	50.39%
AGAINST	58	36	59	19	18	68	21	104	383	49.61%
<b>TOTAL COUNT - QUESTION 3</b>									<b>772</b>	

<b>TOTAL ELIGIBLE VOTERS: 11,450</b>	<b>TOTAL PUBLIC COUNT: 781</b>	<b>TURN OUT: 6.82%</b>
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We the undersigned certify the above and foregoing is a correct canvass of the returns of the election held on August 9, 2016 at Gallup, New Mexico.

WITNESS our signatures this 11th day of August, 2016.



[Seal]  
 Alfred Abeita II, City Clerk

The Honorable Grant Foutz, Municipal Judge  
 Alicia Palacios, Deputy City Clerk

George Kozelski, City Attorney