

AGENDA

GALLUP CITY COUNCIL REGULAR MEETING TUESDAY, DECEMBER 13, 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 November 22, 2016

D. Discussion/Action Topics

1. Approval of Agreement with Rehoboth McKinley Christian Health Care Services (RMCHCS) for Work Rehabilitation and Aftercare Program – Maryann Ustick, City Manager
2. Approval of Power Purchase Agreement with Mangan Renewables, LLC to Purchase the Energy Production from a Photovoltaic Facility to be Constructed and Operated on City-Owned Property – Richard Matzke, Electric Director
3. Approval of Budget Adjustment and Bid Award for the Replacement of the Water Main Along Fifth Street From Highway 66 Through Park Pump Station – Dennis Romero, Water and Sanitation Director
4. Ordinance No. C2016-13; Amendments to Hillcrest Cemetery Ordinance – George Kozeliski, City Attorney

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Discussion/Action Topics, continued

5. Resolution No. R2016-46; A Resolution Changing the Name of a Certain Street Within the City Limits of the City of Gallup From Wilson Avenue to Black Diamond Canyon Drive – George Kozeliski, City Attorney
6. Authorization to Dispose of City Owned Property by Ordinance – George Kozeliski, City Attorney
7. Vacation of Trail Easement Located in Lot 36, Block B of First Unit Burke-George Heights Addition – George Kozeliski, City Attorney
8. Budget Transfer from General Fund Reserves for Land Development Standards Update – Clyde (C.B.) Strain, Planning and Development Director
9. Resolution No. R2016-45; Election Resolution for the March 14, 2017 Regular Municipal Election – Alfred Abeita, City Clerk
10. Approval to Cancel the December 27, 2016 Regular City Council Meeting – Maryann Ustick, City Manager

E. Presentation and Information Items

1. Presentation on the City's New Interactive Voice Response (IVR) System – Jon DeYoung, Assistant City Manager

F. Comments by Public on Non-Agenda Items

G. Comments by Mayor and City Councilors

H. Comments by City Manager and City Attorney

I. Motion to Adjourn

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

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

Minutes

Regular Meeting of November 22, 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 6:00 p.m. on Tuesday, November 22, 2016.

The meeting was called to order by Mayor Jackie McKinney.

Upon roll call, the following were present:

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

Presented to the Mayor and Councilors was the Minutes of the Regular Meeting of November 9, 2016.

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

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

1. Approval of Design/Build/Operate (DBO) Contract with CH2M Hill for the Operation of the Wastewater Treatment Plant – George Kozeliski, City Attorney; Nann Winter, Esquire; and Dennis Romero, Water and Sanitation Director

Mr. Romero provided a power point presentation summarizing the key points of the proposed DBO contract negotiated with CH2M Hill. The contract is for a term of 8 years and provides for the design and construction of capital improvements and operation services for the City's Wastewater Treatment Plant. The costs of the contract are as follows: the pass through costs are \$398,774 per year; the fixed construction costs are \$1,948,636 which may be spread out over a period of the contract; and the annual service fee is \$1,355,162 per year, which will be reduced to \$1,247,610 per year after the capital improvements are completed. On behalf of CH2M Hill, Mr. Romero invited the Mayor and Councilors to visit the Wastewater Treatment Plant for a tour to observe the current state of the facility.

Discussion followed concerning the hotline for reporting sewage odors, the City's proposed investment of close to \$2 million for upgrades at the Wastewater Treatment Plant, the work being done by Evoqua to address foul odors in the City's collection

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system, provisions in the contract for adjusting the Company's Service Fee, the pass through costs for electric service at the facility and the need to discontinue hauling sludge to the regional landfill once the sludge dryer and other improvements have been made to the plant.

Following discussion, Councilor Palochak made the motion to approve the Design/Build/Operate (DBO) Contract with CH2M Hill for the Operation of the Wastewater Treatment Plant. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Landavazo and Mayor McKinney all voted yes.

Mayor McKinney answered questions posed by an unidentified individual from the audience regarding the City's odor control efforts at the Wastewater Treatment Plant.

2. Request for Approval of Operations, Maintenance and Repair Agreement between the City of Gallup and the Navajo Tribal Utility Authority (NTUA) for Project 4 (Twin Lakes Turn Out) and the Twin Lakes Well Connection (to Navajo Gallup Water Supply Project Reach 12A) – George Kozeliski, City Attorney and Nann Winter, Esquire

Ms. Winter said the proposed agreement is the first in a series of agreements that the City will need to execute with affected entities for the operation of the Navajo-Gallup Water Supply Project.

Marc DePauli, DePauli Engineering and Surveying, said Project 4 was constructed by the City of Gallup with the use of State Water Trust Board Funds. Since the project has been completed, the proposed agreement will transfer the operations, maintenance and repairs of Project 4 to NTUA.

Councilor Landavazo made the motion to approve the Operations, Maintenance and Repair Agreement Between the City of Gallup and the Navajo Tribal Utility Authority for Project 4, Twin Lakes Turn Out and the Twin Lakes Well Connection, to Navajo Gallup Water supply Project Reach 12A. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Garcia, Kumar and Mayor McKinney all voted yes.

3. Approval of Amended and Restated Joint Powers Agreement for the Northwest New Mexico Regional Solid Waste Authority (NWNMRSWA) – Billy Moore, Executive Director, Northwest New Mexico Regional Solid Waste Authority

Mr. Moore presented the proposed amendments to the Joint Power Agreement between the City of Gallup, McKinley County, Cibola County, City of Grants and the Village of

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Milan for the NWNMRSWA. The NWNMRSWA is planning to construct a new cell at the regional landfill and is considering financing options for funding the project. The NWNMRSWA has the option of borrowing up to \$500,000 at 0% interest through the New Mexico Finance Authority; however, it would have to go through the intercept process with each of the five governmental entities. The proposed changes to the Joint powers Agreement would allow the Board of Directors of the NWNMRSWA to borrow money and pledge revenue of the NWNMRSWA without further authorization by the five governmental agencies.

Discussion followed concerning the proposed amendment which limits the Board of Directors' ability to borrow money to the percentage of contributed Environmental Gross Receipts Tax, which is set at 50% by each of the five governmental entities. Further discussion consisted of the NWNMRSWA's refinancing of its loan through the New Mexico Finance Authority in 2012 and the number of permitted cells and land the NWNMRSWA has available for future use.

Following discussion, Councilor Kumar made the motion to approve the Amended and Restated Joint Powers Agreement for the Northwest New Mexico Regional Solid Waste Authority. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Landavazo, Palochak and Mayor McKinney all voted yes.

4. Approval of Memorandum of Understanding with the Gallup McKinley County Schools for the Construction of a Waterline near JFK Middle School – Dennis Romero, Water and Sanitation Director

Mr. Romero said the proposed Memorandum of Understanding was removed from the November 21, 2016 School Board Meeting Agenda; therefore, he recommended that the matter be tabled until further notice.

Councilor Kumar made the motion to table the Memorandum of Understanding with the Gallup McKinley County Schools for the Construction of a Waterline near JFK Middle School. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Landavazo, Garcia and Mayor McKinney all voted yes.

5. Resolution No. R2016-43; A Resolution Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority for Issuance of General Obligation Bonds – Paul Cassidy, RBC Capital Markets

Mr. Cassidy presented the proposed Resolution which will allow the City to begin working with the New Mexico Finance Authority for financing roadway improvements by

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granting a loan or by buying the General Obligation Bonds to be issued by the City. The issuance of \$5,365,000 in General Obligation Bonds was authorized by the City's electorate at the Special Election held on August 9, 2016. Mr. Cassidy provided information relative to the issuance of the bonds and answered questions concerning future interest rates.

Councilor Garcia made the motion to approve Resolution No. R2016-43. Seconded by Councilor Kumar. Roll call: Councilors Garcia, Kumar, Landavazo, Palochak and Mayor McKinney all voted yes.

6. Wage Agreement Between the City of Gallup and the United Mine Workers of America (UMWA), Local 1629 – Klo Abeita, Human Resources Director

Ms. Abeita presented the proposed Wage Agreement as negotiated with UMWA. The Agreement provides for a 2% wage increase for employees covered under the union contract. The total cost for the wage increases and associated benefits for the remainder of the fiscal year is \$54,655.

Councilor Kumar made the motion to approve the Wage Agreement Between the City of Gallup and the United Mine Workers of America, Local 1629. Seconded by Councilor Palochak. Councilors Kumar, Palochak, Landavazo, Garcia and Mayor McKinney all voted yes.

7. Wage Agreement Between the City of Gallup and the Gallup Fire Fighters Union, International Association of Fire Fighters (IAFF), Local 4296 – Klo Abeita, Human Resources Director

Ms. Abeita presented the proposed Wage Agreement as negotiated with IAFF. The Agreement provides for a 2% wage increase for employees covered under the union contract. The total cost for the wage increases and associated benefits for the remainder of the fiscal year is \$20,254.

Councilor Garcia made the motion to approve the Wage Agreement Between the City of Gallup and the Gallup Fire Fighters Union, International Association of Fire Fighters, Local 4296. Seconded by Councilor Kumar. Roll call: Councilors Garcia, Kumar, Landavazo, Palochak and Mayor McKinney all voted yes.

Mayor McKinney recommended that the following item be considered as a Presentation and Informational Item only:

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8. Acceptance of the Four Corners Intermodal Transloading Equinox (4CITE) Master Plan – Evan Williams, Deputy Director, Northwest New Mexico Council of Governments (NWNMCOG)

Mr. Williams provided a brief timeline on how the Greater Gallup Economic Development Corporation (GGEDC) has been working with NWNMCOG as the Northwest Regional Transportation Planning Organization on the project.

Denise Weston, Bohannan Huston, provided a power point presentation on the Four Corners Intermodal Transloading Equinox. A copy of the power point presentation is attached hereto, marked at Exhibit A and made a part of these official Minutes.

Discussion followed concerning Mentmore Road and the decision that will need to be made on whether to have truck routes designations or not. Councilor Palochak stated that the residents of Mentmore do not want to have large trucks on Mentmore Road. Mayor McKinney recommended Carbon Coal Road as a designated truck route. Further discussion was about the combination of funding from various sources that was used for the development of the Santa Teresa Inland Port.

9. Budget Adjustment for New Mexico Public Regulation Commission (PRC) Communication Grant – Chief Eric Babcock, Gallup Fire Department

Chief Babcock asked for approval to use PRC funds in the amount of \$21,473 for the purchase of 40 voice amplifiers.

Councilor Palochak made the motion to approve the budget adjustment for the New Mexico Public Regulation Commission Communication Grant. Seconded by Councilor Landavazo. Roll call: Councilors Palochak, Landavazo, Garcia, Kumar and Mayor McKinney all voted yes.

10. Allison Bridge Reconstruction Contract Award – Stan Henderson, Public Works Director

Mr. Henderson said the proposed project will replace the existing bridge over the Puerco River on Allison Road. The engineer of record is Bohannan Huston of Albuquerque and time for completion for the project is 210 calendar days. Unfortunately, there is a budget shortfall of \$1.4 million for the project. Rather than re-advertising bids for the project, staff recommended the following budget transfers to make up the budget shortfall: \$1,088,000 from Gas Tax Revenues, \$200,000 from the 2016-2017 East Nizhoni Boulevard Reconstruction Project and \$115,000 from the 2016-2017 Ridgecrest Avenue Re-pavement Project. By approving the budget transfer, the

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East Nizhoni Boulevard Reconstruction Project and the Ridgecrest Avenue Repavement Project would be deferred to a future budget year. Based on the bids submitted for the project, staff recommended award of the construction contract to FNF Construction in the amount of \$5,016,043.70, including NMGRT. Staff also recommended approval of the previously stated budget transfers and the Community Improvement Plan project deferrals and previously described.

Discussion followed regarding the amount of time it has taken to plan, design, gather funding and to obtain required clearances for the project.

Councilor Palochak made the motion to approve the Allison Bridge Reconstruction Contract Award as presented, including the recommended budget transfers for the project. Seconded by Councilor Landavazo. Roll call: Councilors Palochak, Landavazo, Kumar, Garcia and Mayor McKinney all voted yes.

11. Oliva Park On Basilio Drive Construction Contract Award – Stan Henderson, Public Works Director

Mr. Henderson said the proposed project will construct a new park for the Red Hills Mobile Home Park and the Patton Drive neighborhood. The park will consist of a basketball court, playground equipment and picnic areas. Huitt-Zollars of Albuquerque is the architect of record and will be in charge of construction administration and quality assurance. Time for completion of the project is 120 calendar days. Unfortunately, there is a budget shortfall of \$150,000 for the project. Rather than re-advertising bids for the project, staff recommended the following budget transfer to make up the budget shortfall: \$150,000 from the 2015-2016 Sidewalk Participation Program. Based on the bids submitted for the project, staff recommended award of the construction contract to Longhorn Construction Services in the amount of \$336,418.63, including NMGRT. Staff also recommended approval of the previously stated budget transfer and the Community Improvement Plan project reduction and previously described.

Councilor Landavazo recognized the donation of land by Joe and Christine DiGregorio as well as the allocation of state funding by Senator George Munoz and Representative Wonda Johnson for the project.

Councilor Kumar made the motion to approve the Oliva Park On Basilio Drive Construction Contract Award as presented, including the recommended budget transfer for the project. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Landavazo, Palochak and Mayor McKinney all voted yes.

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12. Skate Board Park Construction Contract Award – Stan Henderson, Public Works Director

Mr. Henderson said the proposed project will construct a new skate board park which will replace the existing park that will be demolished for the reconstruction of Lincoln Elementary School by the Gallup McKinley County Schools. MWRM Landscape Architects of Albuquerque is the architect of record and will be in charge of construction administration and quality assurance. Time for completion of the project is 120 calendar days. Unfortunately, there is a budget shortfall of \$183,000 for the project. Rather than re-advertising bids for the project, staff recommended the following budget transfer to make up the budget shortfall: \$100,000 from the 2015-2016 Sidewalk Participation Program, \$50,000 in remaining funds from the Storm Drainage Plan and \$33,896 in remaining funds from the Hospital and College Drive Reconstruction Project. Based on the bids submitted for the project, staff recommended award of the construction contract to H.O. Construction in the amount of \$582,788.37, including NMGRT. Staff also recommended approval of the previously stated budget transfers and the Community Improvement Plan project reductions and previously described.

In addition to the \$285,000 in capital outlay funding that has been accumulated over a span of three years, Mayor McKinney also recognized the private donations provided by Councilor Kumar in the amount of \$5,000, \$100,000 from the Southwest Indian Foundation, \$5,000 from the St. Bonaventure Indian Mission and \$10,000 from the Tony Hawk Foundation for the project.

Councilor Palochak made the motion to approve the Skate Board Park Construction Contract Award as presented, including the recommended budget transfers for the project. Seconded by Councilor Garcia. Councilors Palochak, Garcia, Kumar, Landavazo and Mayor McKinney all voted yes.

13. Marcy Park Sidewalk Improvements Project – Stan Henderson, Public Works Director

Mr. Henderson said Marcy Park is a part of the Debra Drive Public Housing Area and it is maintained by the Gallup Housing Authority (GHA). GHA requested the City's assistance with cost sharing for sidewalk improvements on the Marcy Lane street frontage. Upon review, the park frontage (curb, gutter and sidewalk) has substantially deteriorated on both Debra Drive and Marcy Lane. Americans with Disabilities Act (ADA) handicap ramps at the adjoining street intersections also require upgrading. In keeping with the City's ADA Consent Decree with the United States Department of Justice, staff recommended a joint cost project for reconstructing the street frontage on both Marcy Lane and Debra Drive. Mr. Henderson asked for approval of a project

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budget for the sidewalk improvements as follows: \$20,000 from Councilor Palochak's Discretionary Funds from 2015-2016, \$46,000 from the 2016-2017 Sidewalk Participation Project and \$20,000 from the Gallup Housing Authority. City staff will be the lead entity for construction.

Councilor Landavazo made the motion to approve the Marcy Park Sidewalk Improvement Project as presented, including the recommended budget transfers for the project. Seconded by Councilor Palochak. Roll call: Councilors Landavazo, Palochak, Garcia, Kumar and Mayor McKinney all voted yes.

14. Resolution No. R2016-44; A Resolution Rescinding Resolution No.2826, Establishing a Front Footage Charge for Water & Sewer Connections in Parts of Gallup, New Mexico – George Kozeliski, City Attorney

Mr. Kozeliski presented the proposed Resolution to rescind a 41-year old Resolution establishing front footage charges for water and sewer lines constructed along East Aztec Avenue from Boardman Drive to Patton Drive and for property on or near County Road 1. Since the Resolution from 1975 was passed, the State Supreme Court has ruled that municipal liens are only good for four years. The 1975 Resolution was not part of a Special Assessment District which would have allowed the Resolution to continue for a longer period of time. Due to the length of time that has past, the 41-year old Resolution has created a "cloud on title" of adjoining property owners and should be rescinded. Mr. Kozeliski answered questions regarding the clouds created on property titles and if there were liens still pending based on the 1975 Resolution.

Councilor Garcia made the motion to approve Resolution No. R2016-44. Seconded by Councilor Kumar. Roll call: Councilors Garcia, Kumar, Landavazo, Palochak and Mayor McKinney all voted yes.

15. Acceptance of a Public Utility Easement from High Desert QSRS, LLC – George Kozeliski, City Attorney

Mr. Kozeliski provided an overview of how the sewer lines were constructed many years ago in the area east of McKinley Drive and North of East Aztec Avenue in the vicinity of Taco Bell East. He explained that the existing sewer line that runs under Taco Bell's ordering stand has collapsed which has resulted in the City having to pump sewage for over a month. To resolve the issue, High Desert QSRS, LLC (owner of Taco Bell) will grant the City a 15-foot easement along the west property line in order to construct a new sewer line to the City's main on East Highway 66. The new sewer line will provide service to Taco Bell and three residential properties on East Aztec Avenue. The proposed easement will also allow the City to abandon the present sewer line once the

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new sewer line has been constructed.

Discussion followed concerning the sewer line that runs under the gas station building east of Taco Bell.

Councilor Palochak made the motion to accept the Public Utility Easement from High Desert QSRS, LLC. Seconded by Councilor Landavazo. Roll call: Councilors Palochak, Landavazo, Kumar, Garcia and Mayor McKinney all voted yes.

Comments by Public on Non-Agenda Items

None.

Comments by Mayor and City Councilors

Councilor Palochak congratulated Mary Ellen Pellington, Library Director, who was one of the recipients of the 2016 Governor's New Mexico Distinguished Public Service Awards. Councilor Palochak also recognized Joe and Christine DiGregorio who were the recipients of the Lifetime Achievement Award for Public Service. Councilor Palochak wished everyone a Happy Thanksgiving.

Councilor Landavazo wished everyone a Happy Thanksgiving. He also encouraged everyone to thank our police officers for their service.

Councilor Kumar wished everyone a Happy Thanksgiving.

Councilor Garcia also congratulated Ms. Pellington and Mr. and Mrs. DiGregorio for their achievements. Councilor Garcia said she will not have a Northside Neighborhood Meeting during November and December due to the holidays. She will have a Neighborhood Meeting at Roosevelt Elementary School on December 13, 2016. Councilor Garcia wished everyone a Happy Thanksgiving.

Mayor McKinney wished safe travels to all those traveling during the holidays. He also wished everyone a Happy Thanksgiving and complemented City staff for all the work they do.

Comments by City Manager and City Attorney

Mr. Kozeliski wished everyone a Happy Thanksgiving.

Ms. Ustick said she will follow-up with Mr. Romero and CH2M Hill on scheduling the tours at the Wastewater Treatment Plant. She wished everyone a Happy Thanksgiving and thanked City staff for all the hard work they do.

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

Jackie McKinney, Mayor

ATTEST:

Alfred Abeita II, City Clerk

Discussion/Action Topic 1

**Approval of Agreement with Rehoboth McKinley Christian Health Care Services
(RMCHCS) for Work Rehabilitation and Aftercare Program**

Maryann Ustick, City Manager



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: December 13, 2016

SUBJECT: Agreement with Rehoboth McKinley Christian Health Care Services (RMCHCS) for Work Rehabilitation and Aftercare Program
DEPT. OF ORIGIN: City Manager's Office
DATE SUBMITTED: December 8, 2016
SUBMITTED BY: Maryann Ustick

Summary: The FY 2017 Behavioral Health Investment Zone (BHIZ) approved budget allocates a total of \$115,200 for Residential Treatment and Aftercare Services. RMCHCS has a 90 Day Residential Treatment Program which is expanding its services to provide a pilot 120 Day Work Rehabilitation and Aftercare Program. Since these new services are not covered by other funding, City staff and RMCHCS staff have worked together to provide FY 2017 BHIZ funding for these expanded and critically needed services for clients who are not prepared for employment upon completion of the 90 Day Residential Treatment Program. The attached Agreement provides funding for a seven month period retroactive to December 1, 2016 and through June 30, 2017. The BHIZ funding in the amount of \$60,315.77 will be used to fund the staff operating costs for this program and RMCHCS will provide housing, support services and a small stipend to the clients enrolled in the work program. The BHIZ Program Evaluator will work with RMCHCS to track and evaluate the evidence-based outcomes of this Work Rehabilitation Program. Clients involved in this program will perform community service work activities as determined by RMCHCS in partnership with the City and non-profit organizations.

Fiscal Impact: This Agreement will be funded with State BHIZ funds and will have no fiscal impact on the City's General Fund.

Reviewed By: Charlotte Beech
Finance Department

Attachments: Agreement

Legal Review:

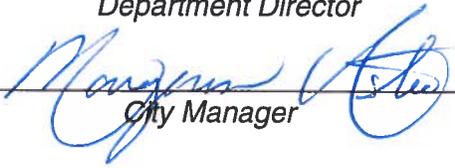
Approved As To Form: _____

[Signature]
City Attorney

Recommendation: Approval of Agreement with RMCHCS for a Work Rehabilitation and Aftercare Services Program in the amount of \$60,315.77 in State BHIZ funds retroactive to an effective date of December 1, 2016.

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:	_____

Professional Service Funding Agreement

This Agreement, entered into this on this 1st day of December 2016, is by and between the City of Gallup, a municipal corporation organized pursuant to NMSA §3-2-1 et. seq. (hereinafter referred to as “City”) and Rehoboth McKinley Christian Health Care Services, a New Mexico nonprofit corporation (hereinafter referred to as “RMCHCS”).

The parties, recognizing the value of work rehabilitation and aftercare to individuals receiving treatment for drug and alcohol use disorders, as referenced in the City’s FY 2017 Behavioral Health Investment Zone (BHIZ) Program and Strategy, in consideration of the mutual promises and covenants contained herein, agree as follows:

RMCHCS RESPONSIBILITIES AND SCOPE OF SERVICES:

1. Provide a Work Rehabilitation Program that includes but is not limited to: aftercare services, work and vocational rehabilitation services, transportation, client screening and monitoring, program attendance verification and program management and administration.
2. RMCHCS will be responsible for the recommendation of each participant. All participants will be residents of RMCHCS’s 90 day residential treatment program or they will be successful graduates of RMCHCS’s 90 day residential treatment facility and be enrolled in the 120 Work and Vocational Rehabilitation program.
3. RMCHCS will work together with the, NCI Detox facility to share statistical information gathered about the program participants for the purpose of tracking the residents’ success and failure rates along with their work and vocational participation status’. RMCHCS will also share program information with the NCI Detox facility and The BHIZ Program Evaluator/SBS Consulting, for the purpose of program evaluation.
4. RMCHCS will collaborate with The NCI Detox facility to accept frequent clients of the NCI Detox facility and to admit them into the RMCHCS 90 day inpatient treatment facility when those frequent clients indicate that they would like to enter a long-term treatment facility.
5. RMCHCS will provide the staff necessary to manage and administer this program. This includes: a Special Projects Director, a Program Administrator, an Aftercare Coordinator, a Transportation worker, a Behavioral Health Technician and a Caseworker.
 - The full time RMCHCS Special Projects Director will spend 100% of his work time managing this program and its participants totaling \$21,537.60 per seven month period.
 - The full time RMCHCS Executive Director of Behavioral Health Services will use 10% of her time as the overarching administrator of the program, totaling \$4,037.60 per seven month period.
 - An Aftercare Program Manager will be utilized to track and work with all program-graduates, post-treatment using 50% of his/her time providing aftercare services as required for the purpose of this contract. This amount will total \$13,740.57 per seven month period.
 - The full time transportation worker will be a RMCHCS employee and will use 50% of his/her time to provide transportation services to residents totaling \$10,616.67 per seven month period.
 - A full time RMCHCS Caseworker will use 50% of his/her time performing the duties needed for this program. That will total \$7,583.33 per seven month period.

- A full time Behavioral Health Technician will use utilize 20% of his/her time performing the duties required for this contract and to assist the residents in the program participation. That total is \$2,800.00 per seven month period.
 - The total amount requested to manage, administer and operationalize this program totals \$60,315.77 for a seven month time frame.
6. The RMCHCS East Campus Residential Treatment Facility will be responsible for tracking, monitoring and reporting the clients' participation and graduation rates along with aftercare statuses while they are participating in the RMCHCS East Campus 90-day drug and alcohol rehabilitation program, both as residents and as aftercare clients. This includes participation in the 120 work program. Additionally, staff will be responsible for reporting their own work time spent managing the program.
 7. Patients who voluntarily enter and participate in the Work Rehabilitation Program (The 120 program) will perform a minimum 20 hours of community service and a minimum of 10 hours of aftercare counseling per week as approved by the RMCHCS Executive Director. The hours and tasks performed will be volunteer labor to be known as "community service". The type of labor will be at the discretion of RMCHCS in cooperation with the City and non-profit service provider organizations.
 8. Each client/participant will provide: a letter of interest, a letter of recommendation from the client' counselors, a letter of recommendation from the Special Projects Coordinator along with approval from the Clinical Director and Executive Director for each participant in this program.
 9. All participants will be successful graduates of RMCHCS's 90 day residential treatment facility and be enrolled in the 120 program.
 10. Each participant will submit to screening and monitoring of all work rehabilitation and aftercare participation. This includes but is not limited to, values training, drug and alcohol screening, AA/NA meeting attendance verification and weekly progress reports from participants' counselors.
 11. Clients may terminate their enrollment at any time in the Work Rehabilitation and Aftercare Program and such termination shall not be considered as the unsuccessful completion of treatment that may have been ordered by any court.
 12. RMCHCS will provide aftercare support services along with the management and administration of the volunteer work-rehab program, the participants and the work sites. This includes, work assignments, transportation, drug and alcohol screening of all participants, AA/NA meeting attendance verification and obtaining weekly progress reports from participants' counselors.
 13. The target population to be served includes but is not limited to the frequent and reoccurring clients at the NCI Detox Facility, as identified in the FY 2017 BHIZ Program Strategy.
 14. RMCHCS will collaborate with NCI Detox facility participants and work together with this facility to admit clients into the RMCHCS residential treatment facility when the client indicates that he or she is interested in participating in the program.

COMPENSATION

15. "City" will appropriate to RMCHCS in seven months (December 1, 2016 to June 30, 2017), an amount not to exceed sixty thousand, three hundred and fifteen dollars and seventy-seven cents (\$60,315.77). RMCHCS shall invoice the "City" \$8,616.54 on a monthly basis (by the 5th of the following month) and submit signed timesheets verifying that 100% of the indicated time was spent on aftercare and work rehab services to the satisfaction of the "City". The parties agree

that any unexpended surplus money shall revert to the "City". The "City" shall appropriate the necessary costs from this allocation to obtain professional services.

Release

16. RMCHCS, upon final payment of the amount due under this agreement, releases the "City", it's officers and employees, and volunteers from all liabilities, claims and obligations whatsoever arising from or under this agreement.

LIABILITY:

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

NONDISCRIMINATION:

18. Neither RMCHCS nor The City will discriminate against any person because of age, race, sex, religion, physical or mental handicap, color, ancestry, sexual orientation, gender identity or national origin, in any manner whatsoever.

TERM.

19. This Agreement shall be in effect from December 1, 2016 through June 30th, 2017 unless terminated earlier by the parties. Either party may terminate this agreement by providing thirty (30) days written notice of intent to terminate.

ENTIRE AGREEMENT/ MODIFICATION.

20. This Agreement constitutes the entire understanding of the parties and may be modified only in writing and signed by both of the parties.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date of executing by the City below

REHOBOTH MCKINLEY CHRISTIAN HEALTH SERVICES (RMCHCS) SIGNED BY:

_____ Date: _____
David Conejo, CEO

_____ Date: _____
John McMullin, CFO

_____ Date: _____
Erika Hayes, Executive Director BHS

CITY OF GALLUP, NEW MEXICO

BY: _____ Date: _____
Maryann Ustick, City Manager

ATTEST:

Alfred Abeita, City Clerk

Discussion/Action Topic 2

**Approval of Power Purchase Agreement with Mangan Renewables, LLC
to Purchase the Energy Production from a Photovoltaic Facility
to be Constructed and Operated on City-Owned Property**

Richard Matzke, Electric Director



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: December 13, 2016

SUBJECT: Approval of a Power Purchase Agreement with Mangan Renewables, LLC to purchase the energy production from a photovoltaic facility to be constructed and operated on City-owned property.
DEPT. OF ORIGIN: Electric
DATE SUBMITTED: December 7, 2016
SUBMITTED BY: Richard Matzke

Summary: City Council authorized staff on May 10, 2016 to proceed with negotiating a Power Purchase Agreement with Mangan Renewables, LLC who was selected as the top responder to the City's RFP by the RFP review team. The proposed Power Purchase Agreement conforms to the City's RFP and incorporates the proposal submitted by Mangan Renewables. The agreement provides for Mangan Renewables to construct and operate a 7.8 mW photovoltaic generating facility on City-owned property south of I-40, between Allison Road and Munoz Overpass. The agreement further provides for the City to purchase all production from the plant at a cost of \$0.0475/kWh over the 25 year term. The City will have the option to purchase the facility any time after the seventh year of commercial operation at fair market value.

Fiscal Impact:

Reviewed By: Charlotte Beents
Finance Department

The City will save roughly \$20,000 the first year of operation over power purchased from Continental Divide and will save approximately \$750,000 over the remaining term of our Power Purchase agreement with Continental Divide. The City will perform a system impact study costing approximately \$50,000 to determine what modifications to the Gallup electric system may be needed to accommodate connection of the photovoltaic facility.

Attachments: Power Purchase agreement between Mangan Renewables and the City of Gallup.

Legal Review:

Approved As To Form: [Signature]
City Attorney

Recommendation: Staff recommends approval of the proposed Power Purchase Agreement with Mangan Renewables, LLC including the Lease Agreement allowing Mangan Renewables, LLC to construct and operate the photovoltaic facility on City-owned property for the duration of the Power Purchase Agreement. The final form of the Lease Agreement must be acceptable to Gallup legal counsel.

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: _____

POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this "**PPA**" or "**Agreement**") is made and entered into as of December ____, 2016 (the "**Effective Date**"), by and between Mangan Renewables, a California Corporation, with its principal place of business at 3901 Via Oro Avenue, Long Beach, CA 90810 ("**Seller**"), and the City of Gallup New Mexico, a municipality in the State of New Mexico with its principal place of business at 110 West Aztec Ave., Gallup, New Mexico, 87301 ("**Gallup**"). Seller and Gallup are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. The City issued a request for proposals ("RFP") on ____ seeking proposals from solar power generation developers and/or wholesale power marketers to provide a long term power purchase agreement for all of the electric energy output from a solar photovoltaic generation facility to be developed, constructed and operated by such developers or marketers and to be located on property owned by the City of Gallup and interconnected to the Gallup Electric Utilities distribution system. The RFP has the meaning ascribed to it in Exhibit C and is attached to this Agreement as Appendix A. In the event of a conflict between the RFP and the terms and conditions of this Agreement (including all Exhibits and Appendices thereto other than the RFP), this Agreement shall be controlling

B. Seller, in response to the RFP, submitted a Proposal. The Proposal has the meaning ascribed to it in Exhibit C and is attached to this Agreement as Appendix B. In the event of a conflict between the Proposal and the terms and conditions of this Agreement (including all Exhibits and Appendices thereto other than the Proposal), this Agreement shall be controlling. C. Seller has experience in building, financing, owning and operating solar energy facilities.

D. Seller intends to build, finance, own and operate a solar energy facility (the "**SEF**") as more particularly described in Exhibits A-1 & A-2, which SEF is located on the Property described in Exhibit B hereto.

E. Seller desires to sell to Gallup, and Gallup desires to purchase from Seller, all of the Energy Output, subject to the Terms and conditions hereunder, delivered to Gallup at the Delivery Point during the Term and otherwise in accordance with the terms of this PPA.

F. Gallup desires to retain an option to purchase the SEF at some time in the future but no earlier than seven (7) years after the Commercial Operation Date ("COD") as such COD is described in Section 2.4.

AGREEMENT

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this PPA and the Exhibits hereto, and other good and valuable consideration, the receipt of which is hereby acknowledged, Seller and Gallup agree as follows:

ARTICLE 1.

DEFINED TERMS; RULES OF INTERPRETATION

1.1 Defined Terms. Capitalized terms used in this PPA shall have the meanings ascribed to them in Exhibit C, the *Schedule of Definitions and Rules of Interpretation*, attached hereto and made a part of this PPA by this reference, or elsewhere in this PPA.

1.2 Rules of Interpretation. The rules of interpretation in Exhibit C, shall apply to this PPA unless expressly provided otherwise.

1.3 Not a Public Work. It is agreed and understood between the Parties that the installation, operations, sale, and/or purchase of electricity under this PPA *is not*, nor in any way should be construed as a public works project, as such term is commonly used in conjunction with municipal or other governmental projects.

TERM AND TERMINATION

2.1 Term.

(a) The initial term of this PPA (the “*Initial Term*”) with respect to each SEF shall commence on the Effective Date and shall be in effect until 11:59 p.m. local time in Albuquerque, New Mexico on the twenty-fifth (25th) year anniversary of the applicable Commercial Operation Date.

(b) Without constituting an Event of Default under this PPA, and without liability of either Party to the other Party (except for such amounts then due and owing under this PPA as of the date of such termination), Seller shall have the right, but not the obligation, to terminate this PPA prior to expiration of the Term upon the occurrence of the following and by notification to Gallup as soon as reasonably practical under the circumstances:

(i) an unstayed order of any Governmental Entity having the effect of subjecting the sales of Energy Output to federal or state regulation of prices and/or services; or

(ii) elimination or alteration of one or more Environmental Incentives or other change in law that results in a material adverse economic impact on Seller and/or its ability to perform its obligations under this PPA, unless the Parties have agreed to amend this PPA as provided in Section 8.6 below.

2.2 For the avoidance of doubt, notwithstanding any other provision herein, should termination of the PPA result from either 2.1(b)(i) or (ii) above, Gallup will not owe a Termination Payment to Seller, nor will Seller owe a Termination Payment to the Gallup.

2.3 Removal of SEFs. Except as otherwise provided herein or in the Lease Agreement relating to an SEF, Seller shall, within one hundred fifty (150) days following the end of the Term, or any termination of this PPA, at Seller’s sole cost and expense, fully remove the SEFs from the Property and fully restore the Property to its original condition, normal wear and tear excluded. Seller and its agents, consultants and representatives shall have access at all reasonable times to the Property and the SEF Assets for purposes of such removal. An SEF shall be considered abandoned if not removed within one hundred fifty (150) days following the end of the Term or any termination of this PPA and following any written notice as may be required under New Mexico’s Civil Code for abandoned property and becomes the property of Gallup; notwithstanding Seller’s abandonment, Gallup may also pursue applicable remedies or damages at law or equity. In the event Gallup elects to make a Purchase Offer in accordance with Article 13 of this Agreement, Seller shall not remove the SEF.

2.4 Commencement of Construction Date. Shall mean the date on which all necessary assessments performed, permits and approvals have been obtained, and construction of the SEF may commence. Seller shall provide Gallup with written notice of the Commencement of Construction Date (“CCD”) no later than three (3) days prior to the date on which Seller commences construction.

2.5 Notice of Commercial Operation. Subject to the remaining provisions of this PPA, Seller shall notify Gallup in writing when the SEF has achieved Commercial Operation (each, a “*Notice of Commercial Operation*”), and shall in such notice state the applicable Commercial Operation Date (“COD”). Unless waived by Gallup, Seller shall cause such COD to occur no later than twelve (12) months following the CCD.

2.6 Gallup Optional Termination Payment; Notice. Without constituting an Event of Default under this PPA, and without liability of either Party to the other Party (except for such amounts then due and owing under this PPA as of the date of such termination), Gallup may elect to terminate this PPA prior to its expiration by paying a Termination Payment in the amount set forth in the Termination Payment Schedule attached as Exhibit D Upon payment of the Termination Payment in full and any amount otherwise due and outstanding under this PPA by Gallup with respect to the SEFs, this PPA shall terminate,. Prior to payment in full of the Termination Payment, this PPA shall remain in full force and effect. The Termination Payment Schedule shall not be construed as evidence of Fair Market Value for purposes of Gallup purchase under Sections 13.4 through 13.7.

**ARTICLE 3.
TERMS AND CONDITIONS**

3.1 Conditions Precedent. The respective rights and obligations of the Parties under this PPA (other than those contained in this Article 3, Article 11 (Representations and Warranties; Gallup Findings and Acknowledgement), Article 12 (Indemnity; Limitations), Article 14 (Confidentiality; Publicity), Article 15 (Dispute Resolution), Article 16 (Notices), Article 17 (Assignment; Financing) and Article 18 (Miscellaneous), which are binding upon the Parties as of the Effective Date) are conditioned upon the satisfaction in full or waiver by the applicable Party of the following:

(a) Seller shall have received or shall have obtained from Seller's Financing Parties all commitments and contractual rights to receive all equity, debt, tax equity and other financing, in such forms and from such parties as is reasonably satisfactory to Seller and as Seller reasonably determines necessary to develop, construct, operate and maintain the SEF over the Term, and all conditions precedent to the effectiveness of any and all such financings and the drawdown of funds thereunder shall have been satisfied or waived to Seller's satisfaction.

(b) Seller shall have received and accepted the audited Financial Statements of Gallup for the most recent Three (3) years prior to the effective date of this PPA.

(c) Gallup shall have received and accepted certificates of Seller's good standing and authority to do business in the State of New Mexico prior to the effective date of this PPA.

(d) Seller shall have obtained all consents, permits, approvals, authorizations, qualifications and orders of all Governmental Entities required by Law in connection with this PPA and the transactions contemplated hereby (collectively, "**Governmental Approvals**") and submitted copies of same to Gallup, or the applicable Government Entities shall have waived the requirement for such Governmental Approval(s) prior to construction start.

(e) Seller shall have entered into and/or submitted to Gallup for execution all contracts (including the Lease Agreement, and Interconnection and Metering Agreement) and delivered all other documents required by Gallup in connection with this PPA and the transactions contemplated hereby (collectively, "**Utility Documents**") to the reasonable satisfaction of the Parties, or Gallup shall have waived the requirement for such Utility Documents.

(f) The Parties (or Seller and the applicable lessor or seller, as the case may be) shall have duly executed and delivered a lease for any leased premises.

3.2 Applicability of Conditions Precedent. If the conditions described in Section 3.1 have not been satisfied or waived by the applicable Party and, as applicable, Seller's Financing Parties on or before the start of construction, this PPA will immediately terminate, and the Parties will have no further obligations or liabilities other than those expressly stated to survive this PPA.

3.3 Terms and Conditions.

(a) Insurance Specifications: See Article 8, Section 8.3, and Exhibit E

(b) Local Employment Preference: Seller will cause the contractor performing the Engineering, Procurement, and Construction of the SEF (the "EPC") to make best efforts to employ the local labor force (which may include "resident businesses" and "resident

manufacturers" as defined in Section 13-1-22, NMSA 1978) in the construction of the SEF, including site preparation, grading and system installation where commercially feasible, as determined by Seller.

(c) Examination of Sites.

(i) The Seller or Seller's agents or representatives shall have visited the site and shall have fully acquainted and familiarized themselves with the conditions as they exist and the operations to be carried out. The Seller shall make such investigations as they may see fit so that they may fully understand the facilities, difficulties and restrictions attending the execution of the work.

(ii) The failure or omission of the Seller to examine any instruction or document, or any part of the specification or to visit the site and acquaint themselves as to the nature and location of the work, the general and local conditions and all matters which may in any way affect performance shall not relieve the Seller of any obligation to perform as specified herein.

(d) Permits, Licenses and Notices.

(i) Seller shall make application for and obtain necessary permits and licenses from State of New Mexico, or the appropriate permitting authority having jurisdiction.

(ii) Seller shall maintain a business registration with the City of Gallup for the term of this Agreement.

(e) Project Reporting. Seller shall provide on-line access to information related to performance and billing, e.g., monthly meter readings and outage data. The website will also include a running service log for the SEF that will include equipment specific information about identified issues and how such issues are being resolved.

(f) Change in Seller Representatives. Gallup reserves the right to request/require a change in Seller representatives (Seller principal points of contact) if the assigned representatives are not, in the opinion of the Gallup, meeting its needs adequately.

(g) Notice: The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kick-backs.

(h) Independent Contractor: Neither the Seller nor its employees are considered to be employees of the Gallup for any purpose whatsoever. The Seller is considered an independent contractor at all times in the performance of the PPA services described herein. The Seller further understands that it is not entitled to any benefits from the Gallup under the provisions of the Worker's Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the Gallup as described in its Employee Personnel Manual.

(i) Discrimination Prohibited: In performing the services required hereunder, the Seller shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, physical handicap or disability. Seller will agree to comply with the Presidents Executive Order No. 11246 as amended.

(j) Reports and Information: In conjunction with Section 10.4, at such times and in such forms as Gallup may reasonably require, Seller shall furnish to Gallup such statements, records, reports, data and information relating to local hire, compliance with federal and state law, and/or notifications of litigation pertaining to the construction and/or operation of

the SEF. In providing documentation pursuant to this provision, Seller shall clearly designate any information that it deems proprietary and not subject to disclosure under the New Mexico Inspection of Public Records Act, Sections 14-2-1 through 14-2-12 NMSA 1978. Any records which are considered to be “public records” in the possession of Gallup under the New Mexico Inspection of Public Records Act shall be disclosed upon lawful request notwithstanding any provision to the contrary found in this Agreement.

(k) Conflict of Interest: Seller 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 of services required by this Agreement. Seller shall comply with any applicable provisions of the New Mexico Governmental Conduct Act and the New Mexico Financial Disclosures Act. Seller also agrees that it shall not represent any person, company or otherwise that would create a conflict of interest for the Term of this Agreement.

(l) Applicable Laws: All applicable federal laws, state laws, municipal ordinances, and the rules and regulations, as may be amended from time to time, including those requirements relating to health, safety and the environment, of all authorities having jurisdiction over said item, shall apply to this Agreement throughout. They will be deemed to be included in the contract the same as though herein written out in full.

(m) Taxes. The Energy Rate as reflected on Section 4.2 does not include taxes, if any, which may be applicable to the purchase and sale of Energy as contemplated in Section 4.6.

(n) Non-Collusion. In signing this PPA, Seller certifies it has not, either directly or indirectly, entered into action in restraint of full competition in connection with this PPA.

3.4 Survival. Effective as of any termination of this PPA, the Parties will no longer be bound by the terms and conditions of this PPA, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment and performance obligations, arising under this PPA prior to termination of this PPA and (b) as provided in Sections 9.3 through 9.7, Section 10.3, Articles 12, 13 (as necessary to give effect to its terms), 14, 15 and 18.

ARTICLE 4.

PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

4.1 Purchase and Sale of Energy Output.

(a) Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Seller shall make available to Gallup, and Gallup shall take delivery of, at the Delivery Point, all of the Energy Output produced by the SEF.

(b) Gallup shall be responsible for arranging delivery of Energy Output from the Delivery Point to Gallup’s installations and/or equipment on Gallup’s side of the Delivery Point necessary for acceptance and use of the Energy Output. The Parties acknowledge that (1) the Energy Output from the SEF is an intermittent, as available energy product, (2) Seller guarantees a level of Energy Output in accordance with the Performance Guarantee in Exhibit G-1, and (3) Gallup is solely responsible for meeting any and all of its energy needs not met from SEF generated-energy at Gallup’s cost and expense.

4.2 Price for Energy Output. Gallup shall pay Seller for the Energy Output, as metered at the Metering Device, the Energy Rate equal to \$47.50 per megawatt-hour (“MWh”) or \$0.0475 per kilowatt-hour under the Performance Guarantee as described in Section 4.1 (b) and Exhibit G-1. The payment to be made by Gallup to Seller shall equal the Energy Output for the

relevant period multiplied by the Energy Rate for such period. Payments made by Seller to Gallup shall be equal to the amount as calculated in Exhibit G-1, Performance Guarantee.

4.3 Title and Risk of Loss of Energy Output. Title to and risk of loss of the Energy Output will pass from Seller to Gallup at the Delivery Point. Seller warrants that it will deliver the Energy Output to Gallup at the Delivery Point free and clear of all liens, security interests, claims and other encumbrances.

4.4 Governmental Charges.

(a) Seller is responsible for paying income taxes attributable to Seller for income received under this PPA.

(b) Both Parties shall use reasonable efforts to administer this PPA and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy Output hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefrom, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

ARTICLE 5.

ENVIRONMENTAL ATTRIBUTES; ENVIRONMENTAL INCENTIVES; REPORTING RIGHTS

5.1 Title to Environmental Attributes, Environmental Incentives and Reporting Rights. Notwithstanding the SEF's presence on the Property, Gallup shall own, and may resell in its sole discretion, all right, title and interest associated with or resulting from the production, sale, purchase or use of the Energy Output including, without limitation (a) all Environmental Attributes and (b) the Reporting Rights.

5.2 Further Assurances. Seller shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Gallup's right, title and interest in and to the Environmental Attributes and Reporting Rights.

ARTICLE 6.

DESIGN, CONSTRUCTION, INITIAL OPERATION, MAINTENANCE AND MONITORING

6.1 Design, Construction, Maintenance and Monitoring of SEF by Seller.

(a) Seller shall, at its sole cost and expense, (i) design, specify, procure (including but not limited to all inverters, transformers, switchgear, wiring and protective devices to connect to the base electrical distribution system) and construct the SEF substantially in accordance with applicable Laws and the General SEF Description set forth in Exhibit A-1 & A-2 and generally in accordance with the construction schedules set forth in Exhibit I (ii) maintain the SEF in good condition and repair and in accordance with applicable Laws, requirements of applicable insurance policies and the terms of this PPA, (iii) reasonably monitor the SEF's performance and provide "commercial best efforts" to repair the SEF in a reasonable time in an effort to minimize any loss of Energy Output caused by a SEF malfunction, and (iv) provide Gallup with real-time online access to the performance data from the SEF.

(b) Seller shall, at its sole cost and expense, develop and design a grading plan, and as applicable, a drainage plan and storm water prevention plan at the Property. Such plan shall be submitted to Gallup for review and approval if required, which shall not be unreasonably conditioned, burdened, or withheld. Further, if after twenty (20) Business Days following submittal by Seller to Gallup, Seller has not received any response, such plans shall be deemed approved.

(c) Prior to commencement of construction, Seller shall provide (i) to Gallup the opportunity to participate in a formal design review with Seller, the purpose of which is to ensure that the SEF has been designed in accordance with the terms of this PPA, and (ii) a detailed design package including system and product specifications and drawings and descriptions, which shall be conforming to design. Gallup agrees to respond to any Seller submitted design package within thirty (30) days. If Gallup fails to so respond, it shall be deemed to have approved the submitted design package.

(d) Seller's scope of work, in addition to providing a functional, interconnected solar PV facility, includes all site preparation work, fencing, implementation of effective control of dust, weeds, and erosion for the duration of the PPA. Seller will limit the use of water to amounts reasonably necessary for compaction and dust control during construction, and for maintenance of the SEFs during operation; provided, that Seller shall pay for water used during construction and operation at the rates applicable to such uses.

(e) Seller will comply with all Federal, State and local regulations regarding the transportation, storage and use of hazardous materials. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 9601 et seq., and its regulations. The term hazardous materials also includes any nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. The term does not include petroleum, including crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA Section 101(14), 42 U.S.C. 9601(14), nor does the term include natural gas.

(f) Seller hereby covenants not to commence construction without financing available and sufficient to complete construction of the SEF.

6.2 Access Provisions in Lease Agreement. Seller and Gallup shall include in the Lease Agreement for the Property provisions to allow Seller reasonable access to the Property through transit of Gallup property to the adjacent Property. Seller and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times to the Property for the purpose of planning, constructing, operating, inspecting, maintaining, repairing and removing the SEF, and to any documents, materials and records of Gallup relating to the Property that Seller reasonably requests in conjunction with these activities. Seller shall comply with all reasonable access and notice procedures agreed upon between Gallup and Seller from time to time in writing relating to activities conducted by or on behalf of Seller on the Property relating to the SEF. During any such activities, Seller, and its sub-contractors, agents, consultants and representatives, shall comply with Gallup's reasonable safety and security procedures (as may be promulgated from time to time and communicated to Seller), and Seller

and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to minimize interference with Gallup's nearby/adjacent activities to the extent reasonably practicable. Notwithstanding anything to the contrary in this Section 6.2, Seller shall be allowed immediate access to the Property and the SEF in connection with any emergency condition then existing with respect to the SEF that could reasonably be expected to pose an imminent threat to the safety of persons or property.

6.3 Seller's Maintenance.

(a) Nothing in this PPA shall limit Seller's ability to maintain the Property in a reasonable manner consistent with Seller's standard practices.

(b) Notwithstanding Section 6.2 above, Gallup acknowledges, agrees and accepts that activities conducted by or on behalf of Seller on the Property relating to the SEF may interfere with Gallup's conduct of business thereon. Seller agrees to take all commercially reasonable measures to minimize such interference.

6.4 Gallup Maintenance of Contiguous Property. Gallup shall maintain any real property owned or occupied by Gallup which abuts the Property on which the SEF is located in a manner which will not disturb or interfere with the operation and maintenance of the SEF by Seller.

(a) Gallup agrees to reasonably assist Seller (at no cost to Seller) in obtaining all necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the SEF, including but not limited to the submission of applications for interconnection of the SEF with the Gallup Joint Utilities Electric Department ("Gallup Electric") to Gallup Electric and Public Service Company of New Mexico ("PNM") as required under Gallup's Network Integration Transmission Service Agreement ("NITSA") and Network Operating Agreement ("NOA") with PNM. Gallup shall not make any material changes to its electrical equipment at the Premises after the date on which the applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect such interconnection. Gallup agrees to cover the cost of any modifications required to the Gallup utility system to the point of interconnection of the SEF including but not limited to substation upgrades and any extension of distribution line to the job site. Should Seller not receive the necessary approvals for the interconnection of the System with respect to the Premises or should the interconnection require equipment in addition to the equipment set forth in Exhibit A-1 and A-2 in connection with the Premises, Seller may terminate this Agreement immediately subsequent to notification from Gallup Electric or PNM. The Parties shall not be obligated to proceed with the installation of the SEF if the applicable approvals are conditioned upon material upgrades to the existing electrical infrastructure and neither Party elects to provide for such upgrades.

ARTICLE 7.

METERING DEVICE AND METERING

7.1 Metering Equipment. The Parties acknowledge and agree that Seller will engage a Third Party Production Monitoring and Reporting Service (a licensed and neutral testing agency), and that the Metering Device used will, at a minimum, be certified by a nationally recognized independent testing laboratory to ANSI C12.20-0.2% class. Time series interval energy production data shall be made available via real-time communication connection accessible to Gallup and its transmission provider(s).

7.2 Measurements. Readings of the Metering Device shall be conclusive as to the amount of Energy Output. If the Metering Device is out of service, is discovered to be

inaccurate pursuant to Section 7.3, or registers inaccurately, measurements of Energy Output shall be determined by Seller in a commercially reasonable manner by reference to quantities of Energy Output measured during periods of similar conditions when the Metering Device was registering accurately. If no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed that the period of such inaccuracy was equal to one-half of the period from the date of the last previous test of such Metering Device (or if no such test had been conducted, from the first Commercial Operation Date) through the date the inaccuracy of the Metering Device has been discovered; *provided, however,* that the period covered by the correction under Section 7.3 shall not exceed six (6) months. If, for calculation purposes, no time period of similar conditions, during which the Metering Device registered accurately can be determined, measurements of Energy Output shall be calculated in good faith by Seller with reference to applicable solar production modeling and solar insolation data generally accepted in the solar industry.

7.3 Testing and Correction.

(a) Right to Conduct Tests. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of the Third Party Monitoring and Reporting Service Provider, or the Metering Device's manufacturer or other certified testing authority to verify the accuracy of the measurements and recordings of the Metering Device. Either Party shall provide at least ten (10) Business Days prior written notice to the other Party of the date upon which any such test is to occur. The Party requesting the test shall prepare a written report setting forth the results of each such test, and shall provide the other Party with copies of such written report not later than twenty (20) Business Days after completion of such test. The Party requesting the test shall bear the cost of the testing of the Metering Device and the preparation of the Metering Device test reports.

(b) Seller Maintenance of Metering Device. Seller shall maintain the Metering Device in accordance with the Metering Device manufacturer's specifications and requirements, and those of applicable Governmental Authorities.

(c) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

(i) If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing, stating in reasonable detail the basis for such dispute.

(ii) The non-disputing Party shall, within fifteen (15) Business days of receiving such notice from the disputing Party, advise the disputing Party in writing as to its position concerning the accuracy of such Metering Device and state reasons for taking such position.

(iii) If the Parties are unable to agree to the accuracy or condition of the Metering Device, either Party may request additional testing of the Metering Device by the Third Party Monitoring and Reporting Service provider, or the Metering Device's manufacturer or other certified testing authority.

(iv) If the Metering Device is found to be inaccurate by 1% or less, any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device under Section 7.3(c)(i) shall bear the cost of inspection and testing of the Metering Device as described in Section 7.3(c)(iii).

(v) If the Metering Device is found to be inaccurate by more than 1% or if such Metering Device is for any reason out of service or fails to register, then (A) Seller shall promptly cause any Metering Device found to be inaccurate to be replaced or adjusted to correct, to the extent practicable, such inaccuracy, (B) the Parties shall estimate the correct amounts of Energy Output delivered during the periods affected by such inaccuracy, service outage or failure to register in accordance with Section 7.2 and (C) Seller shall bear the cost of inspection and testing of the Metering Device as described in Section 7.3(c)(iii). If as a result of such adjustment the quantity of Energy Output for any period is decreased (such quantity, the "**Energy Deficiency Quantity**"), Seller shall reimburse Gallup for the amount paid by Gallup in consideration for the Energy Deficiency Quantity by crediting such amount against Gallup's payment obligations under this PPA. If as a result of such adjustment the quantity of Energy Output for any period is increased (such quantity, the "**Energy Surplus Quantity**"), Seller shall separately invoice for, and Gallup shall pay for the Energy Surplus Quantity at the Energy Rate in accordance with Article 9 below.

ARTICLE 8.
**SEF OWNERSHIP; RISK OF LOSS; INSURANCE; FORCE MAJEURE; CHANGE IN
LAW**

8.1 SEF Ownership. Seller shall be deemed the owner of the SEF for all purposes.

(a) Unless and until the SEF is sold to Gallup as contemplated in Article 13 of this PPA or is assigned as provided in Article 17 of this PPA, notwithstanding the presence and operation of the SEF on the Property, Seller shall at all times retain title to and be the legal and beneficial owner of the SEF and all alterations, additions or improvements made thereto by Seller, and the SEF shall remain the property of Seller or Seller's assigns. In no event shall anyone claiming by, through or under Gallup (including but not limited to any present or future mortgagee of the Property) have any rights in or to the SEF at any time. Gallup acknowledges and agrees that Seller may be required to grant or cause to be granted to Seller's Financing Parties a security interest in the SEF and Gallup expressly disclaims, waives and agrees not to assert any lien, security interest or any other rights it may have in the SEF, from time to time, pursuant to this PPA, at law or in equity.

(b) The Parties specifically acknowledge and agree that Seller or Seller's financing parties shall be the seller of the SEF for federal income tax purposes, and in that connection, Seller and/or Seller's Financing Parties shall be entitled to all depreciation deductions associated with the SEF and to any and all tax credits or other tax benefits associated with the SEF, including any such tax credits or tax benefits under the Code.

(c) Nothing in this PPA shall be construed to convey to Gallup a license or other right to trademarks, copyrights, technology or other intellectual property of Seller or associated with the SEF.

(d) In no event shall the Seller be considered a public utility by Gallup or any third party entity.

8.2 Array Loss.

(a) Seller shall bear the risk of any Array Loss excluding, however, any Array Loss caused totally or partially by the negligence, gross negligence or intentional misconduct of Gallup or Gallup's agents, representatives, vendors, visitors, employees, contractors or invitees (collectively, "***Gallup Misconduct***"), shall be the responsibility of the Gallup, its agents, representatives, vendors, visitors, employees, contractors or invitees that caused the Array Loss.

(b) In the event of any Array Loss that, in the reasonable judgment of Seller, results in less than total damage, destruction or loss of the SEF, this PPA will remain in full force and effect with respect to such SEF and Seller will, at Seller's sole cost and expense, repair or replace the SEF as quickly as practicable. Notwithstanding the foregoing, to the extent that such Array Loss has been caused by Gallup Misconduct, Gallup shall, promptly upon demand from Seller, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, cost of repair, lost revenues under this PPA, loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. To the extent that such Array Loss has been caused by Seller, Seller shall, promptly upon demand from Gallup, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. The calculation of losses described in the preceding sentence shall be based upon Energy Output calculated as provided in Section 7.2 above. Within thirty (30) Business Days after written demand from either Party, the other Party shall deposit or post security acceptable to the damaged Party reasonably estimated by the damaged Party.

(c) In the event of any Array Loss that, in the reasonable judgment of Seller, results in total damage, destruction or loss of the SEF, Seller shall, within twenty (20) Business Days following the occurrence of such Array Loss, notify Gallup whether Seller is willing, notwithstanding such Array Loss, to repair or replace the SEF.

(i) In the event that Seller notifies Gallup that Seller is not willing to repair or replace the SEF, this PPA will terminate automatically upon the effective date of such notice and Seller shall promptly remove the SEF from the Property in accordance with Section 2.3 above. If such Array Loss has been caused by Seller, Seller shall, within thirty (30) Business Days following such termination, be obligated to pay to Gallup, the Termination Payment for that Contract Year as specified in Exhibit D, Termination Payment Schedule. If such Array Loss has been caused by Gallup Misconduct, Gallup shall, within thirty (30) Business Days following such termination, pay to Seller, as liquidated damages, an amount equal to the Termination Payment, applicable as of such termination date, which obligation shall survive the termination of this PPA with respect to such SEF.

(ii) In the event that Seller notifies Gallup that Seller is willing to repair or replace the SEF, the following shall occur: (A) this PPA will remain in full force and effect; (B) Seller will repair or replace the SEF as quickly as economically practicable; (C) if such Array Loss has been caused, totally or partially, by Gallup Misconduct, Gallup shall, promptly upon demand from Seller, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, cost of repair, lost revenues under this PPA, loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any; and (D) if such Array Loss has been caused, totally or partially, by Seller, Seller shall, promptly upon demand from Gallup, pay all damages, costs and expenses arising in connection with such Array Loss, including, without limitation, loss of Environmental Incentives, Environmental Attributes and Reporting Rights, if any. The calculation of losses described in the preceding sentence shall be based upon Energy Output calculated as provided in Section 7.2 above. Within thirty (30) Business Days after written demand from either Party, the other Party shall pre-pay or post security acceptable to the other Party for any repair expenses reasonably estimated by that Party.

8.3 Insurance. The Parties agree to provide insurance in accordance with Exhibit E attached hereto.

8.4 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this PPA and such Party (the "**Claiming Party**") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this PPA (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations under this PPA; *provided, however*, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure for so long as the claim of Force Majeure continues.

8.5 Termination due to Force Majeure. If a Claiming Party claims Force Majeure for a consecutive period of one (1) year or longer, then either Party may terminate this PPA, in whole

or in part, without any liability to the Claiming Party as a result of such termination and Seller shall promptly remove the SEF from the Property at its expense.

**ARTICLE 9.
EVENTS OF DEFAULT; REMEDIES**

9.1 Events of Default. An “*Event of Default*” means, with respect to a Party (a “*Defaulting Party*”), the occurrence of any of the following:

(a) such Party’s failure to make, when due, any payment required under this PPA if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the other Party (the “*Non-Defaulting Party*”);

(b) any representation or warranty made by such Party in this PPA is false or misleading in any material respect when made or when deemed made or repeated if such breach is not cured or remedied (including by payment of money to the Non-Defaulting Party) within twenty-five (25) Business Days after receipt of written notice from the Non-Defaulting Party;

(c) **the failure to perform any material covenant or obligation set forth in this PPA, if such failure is not remedied within twenty (20) Business Days after receipt of written notice from the Non-Defaulting Party (provided that so long as the Non-Defaulting Party has initiated and is diligently attempting to effect a cure, such cure period shall be extended for an additional period not to exceed ninety (90) days), except in connection with Seller’s failure to maintain insurance as provided in Exhibit E hereto, in which case such cure period shall be thirty (30) days;**

(d) Gallup becomes Bankrupt, if permitted by applicable law;

(e) such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within thirty (30) days after receipt of written notice from the Non-Defaulting Party; and

(f) with respect to Gallup, Gallup consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and (i) the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of Gallup under this PPA, and any existing agreements required for the continued receipt of Environmental Incentives, Environmental Attributes or Reporting Rights by Seller (or to otherwise reasonably cooperate with Seller with respect to any additional agreements or other documentation or actions in connection therewith), either by operation of law or pursuant to an agreement reasonably satisfactory to Seller and (ii) the resulting or transferee entity’s Credit Rating is not reasonably acceptable to Seller.

9.2 Remedies for Event of Default. If at any time an Event of Default has occurred and is continuing, the Non-Defaulting Party may (a) pursue applicable remedies or damages at law or equity, as provided in Sections 9.3 through 9.7. Non defaulting parties will additionally have the right:

(a) by notice to the Defaulting Party, to designate a date, not earlier than the date such notice is effective and not later than ninety (90) days after the date such notice is effective, as the date on which this PPA shall terminate (“Early Termination Date”), except in connection with any insurance-related event of default as provided in Section 9.1(c) and (e) of this Article 9, for which an Early Termination Date shall be not later than thirty (30) days after the date that such notice is effective;

(b) to withhold any payments due to the Defaulting Party under this PPA; and

(c) to suspend performance due to the Defaulting Party under this PPA. In the event that the Non-Defaulting Party designates an Early Termination Date, this PPA will terminate as of the Early Termination Date.

9.3 Gallup Rights Upon Default. In the event that Gallup is the Non-Defaulting Party, Gallup may elect to terminate this PPA, in which event Gallup will be entitled, at its sole and exclusive option and in its sole and absolute discretion to require Seller to remove the SEF, as provided in Section 2.3 above, and to pay the Termination Payment for the Contract Year as listed in Exhibit D, Termination Payment Schedule, Notwithstanding any other provision of this Agreement, prior to the exercise of its remedies under this Section 9.3, Gallup shall allow customary notice and cure rights for the benefit of any person who provides financing for the SEF to Seller. Such notice and cure rights shall be set forth in Gallup's consent to assignments or transfers to such financing parties, such as a Consent to Collateral Assignment or a Consent to Sale and Leaseback, as provided for in Section 17.3 hereof.

9.4 Seller Rights Upon Default. In the event that Seller is the Non-Defaulting Party,

(a) Seller may obtain a court order of specific performance of this PPA, to which Gallup hereby consents, pursuant to which Seller shall continue to deliver Energy to Gallup and Gallup shall be obligated to pay each PPA payment as the same become due. Gallup hereby agrees that an order of specific performance directing Gallup to accept and purchase Energy as provided in Section 4.1 and Section 4.2 of this PPA is a necessary and appropriate remedy, and not to oppose Seller's application for such relief on an expedited basis.

(b) Alternatively, after a thirty (30) Business Day period following a Gallup Event of Default, with proper notice having been given, Seller may terminate this PPA and elect, in its sole discretion, to continue to operate the SEF and sell Energy to any third party or parties, and shall be entitled to collect as actual and consequential damages, (a) an amount equal to the difference between (1) the amounts actually received from the sale of Energy to any third party or parties and (2) the amount that would have been due from Gallup, plus (c) the cost of transmission, connection and metering necessary to deliver Energy to such third party or parties. Seller's rights under this Section 9.4(b) shall survive termination of the PPA by Seller under this Section 9.4(b).

(c) In the event that Seller elects either of the foregoing remedies, such express remedy shall be the sole and exclusive remedy available to Seller as a result of termination of this PPA subject, however, to Section 9.7 below.

9.5 Closeout Setoffs. The Non-Defaulting Party will be entitled, at its option, and in its discretion, to set off against any amounts due and owing to the Defaulting Party any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under this PPA.

9.6 Remedies Cumulative. Except as provided in Sections 9.3 and 9.4, the rights and remedies contained in this Article 9 are cumulative with the other rights and remedies available under this PPA or at law or in equity. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this PPA.

9.7 Unpaid Obligations. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

ARTICLE 10.
INVOICING AND PAYMENT; GALLUP ADMINISTRATION OF PLEDGED REVENUES

10.1 Invoicing and Payment. Seller shall prepare and submit invoices to Gallup Accounts Payable, Department of Finance by the 7th day of the month immediately following the billing period. All invoices under this PPA will be due and payable not later than twenty (20) Business Days after receipt of the applicable invoice (or, if such day is not a Business Day, then on the next Business Day). Said invoice shall include the following information: invoice number and date, description of the supplies or services, quantities, unit prices and extended totals. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate until paid in full.

10.2 Disputed Amounts. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this PPA at any time within ninety (90) days following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as otherwise expressly provided in this PPA, and to give notice of the objection to the other Party. Any required payment will be made within five (5) Business Days after resolution of the applicable dispute, together with interest accrued at the Late Payment Interest Rate from the due date to the date paid.

10.3 Netting and Setoff. The Parties may net any and all mutual debts and payment obligations that are due and owing under this PPA and/or the Lease Agreement between the Parties of even date herewith for Seller's placement of the SEF on Gallup's property (the "Lease Agreement"). Accordingly, all amounts owed by each Party to the other Party under this PPA and/or the Lease Agreement, including any related damages and any applicable interest, payments or credits, may be netted such that only the excess amount remaining due will be paid by the Party that owes it. Each Party shall have the right to set off any undisputed amount due and owing to such Party from the other Party under this PPA and/or the Lease against any undisputed amount due and owing from such Party to the other Party under this PPA and/or the Lease.

10.4 Records and Audits. Each Party will keep, for a period not less than five (5) years, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments relating to this PPA. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to this PPA during such other Party's normal business hours.

10.5 Currency. All pricing offered, payments made and amounts referenced hereunder are and will be in U.S. dollars.

ARTICLE 11.
REPRESENTATIONS AND WARRANTIES; GALLUP FINDINGS AND ACKNOWLEDGEMENT

11.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) the execution, delivery and performance of this PPA are within its corporate power and authority, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Law;

(b) this PPA and each other document executed and delivered in accordance with this PPA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) it is acting for its own account, and has made its own independent decision to enter into this PPA, and is not relying upon the advice or recommendations of the other Party in so doing;

(d) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this PPA;

(e) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates;

(f) except as previously disclosed in writing to the other Party there is no pending or, to the knowledge of such Party, threatened litigation, action or proceeding against such Party which could reasonably be expected to have a material adverse effect on such Party or its ability to perform its obligations under this PPA or the License or which purports to affect the legality, validity or enforceability of this PPA or the transactions contemplated hereby;

(g) except as previously disclosed in writing to the other Party there is no pending bankruptcy, reorganization, debt arrangement or other case or proceeding under any bankruptcy or insolvency law, or any dissolution, winding up or liquidation proceeding, in respect to such Party;

(h) such Party is not a "foreign person" and such Party will not assign or otherwise transfer its rights under this PPA to a "foreign person", whereas a "foreign person" is defined as a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, a foreign estate, and any other person that is not a U.S. person;

(i) to Gallup's knowledge there are no facts, circumstances or other matters that may interfere with or delay the construction and installation of the SEF; and

11.2 Gallup Acknowledgement Regarding Seller's Status under Section 366 of the Bankruptcy Code.

(a) Gallup acknowledges and agrees that, for purposes of this PPA, Seller is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Gallup agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Gallup is a debtor; provided that, as of the Effective Date, Gallup is not permitted to seek bankruptcy protection under the laws of the State of New Mexico.

(b) Additionally, the Parties agree that this Agreement constitutes a 'forward contract' as defined in the United State Bankruptcy Code, and therefore not subject to rejection by a trustee in a bankruptcy proceeding.

**ARTICLE 12.
INDEMNITY; LIMITATIONS**

12.1 Indemnity. To the fullest extent permitted by the laws of the State of New Mexico, each Party (the “*Indemnitor*”) hereby indemnifies and agrees to defend and hold harmless the other Party and its Affiliates, respective officers, directors, officers, employees and agents (collectively, the “*Indemnitee*”) from and against any and all Indemnity Claims, whether or not involving a third-party claim, caused by, resulting from, any negligence or intentional misconduct on the part of the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor will not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents; and provided further, that Gallup shall be obligated to indemnify Seller solely from Pledged Revenues, and solely to the extent permitted under the New Mexico Tort Claims Act, Sections 41-4-1 through 41-4-27 NMSA 1978. Nothing in this Section 12.1 is intended to limit the respective remedies for default under this PPA as provided in Article 9 hereof.

12.2 Limitation of Remedies, Liability and Damages. The Parties hereby confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor’s liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor’s liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Without prejudice to the calculation of the amount of any Termination Payment or Purchase Price, and except as otherwise expressly provided in this PPA, neither Party will be liable for consequential, incidental, punitive, special, exemplary or indirect damages, lost profits, lost savings or other business interruption damages, by statute, in tort or under contract, under any indemnity provision or otherwise; *provided, however*, that notwithstanding the foregoing, in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for intentional misconduct or for or with respect to any third party Indemnity Claims. The limitations imposed herein on remedies and the measure of damages are without regard to the applicable cause or causes, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive; provided, that nothing in this PPA shall be construed as requiring either Party as Indemnitor to indemnify the other Party as Indemnitee for the Indemnitee's negligence in connection with construction services performed pursuant to this PPA.

12.3 Limitation on Warranties. Except as expressly provided in this PPA, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose.

ARTICLE 13.
SEF PURCHASE

13.1 Offer to Purchase. After the seventh anniversary of the COD and each subsequent anniversary of the COD Gallup may offer to purchase all of Seller's right, title and interest in and to the SEF Assets on the terms set forth in this PPA (the "**Purchase Offer**"). The intent to make such offer to purchase the SEF assets shall be made by Gallup providing written notice to Seller not less than 60 days prior to each anniversary of the COD. The Purchase Offer may be made by Gallup during the Exercise Period (as defined below) following a Final Determination (as defined below) related to a valuation performed pursuant to this Article 13.

13.2 Gallup Request for Appraisal of SEF Value.

(a) Gallup shall have the right to provide a notice to Seller requiring a determination of the Fair Market Value of the SEF in accordance with Section 13.4 at any time within the period that is at least 180 days prior to: (A) the 7th anniversary of the Commercial Operation Date, (B) each year thereafter, (C) the end of the PPA Term.

(b) Promptly following receipt of Gallup's notice pursuant to Section 13.2(a) above, Seller shall make the SEF Assets, including records relating to the operations, maintenance, and warranty repairs, available to Gallup for its inspection during normal business hours.

13.3 Selection of Independent Appraiser. Within twenty (20) Business Days of Seller's receipt of a notice provided under Section 13.2, Seller and Gallup shall mutually agree upon an Independent Appraiser.

(a) The Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Fair Market Value of the SEF (the "**Preliminary Determination**").

(b) Upon making such Preliminary Determination, the Independent Appraiser shall provide such Preliminary Determination to Seller and Gallup, together with all supporting documentation that details the calculation of the Preliminary Determination. Seller and Gallup shall have the right to object to the Preliminary Determination within twenty (20) Business Days of receiving such Preliminary Determination; *provided* that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the Independent Appraiser shall issue the Independent Appraiser's final determination (the "**Final Determination**") to Seller and Gallup, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination.

(c) If Seller and Gallup cannot agree upon an Independent Appraiser, then each shall designate an appraiser and the two designated appraisers shall appoint a third appraiser (collectively, the Designated Appraisers) to work together to make a Preliminary Determination. The Preliminary Determination shall be accomplished within twenty (20) Business Days of the selection of the third appraiser. If the three appraisers cannot reach a consensus, then the decision of the majority shall be dispositive of the Preliminary Determination value.

(d) If Gallup provides notice requiring a determination of the FMV of the SEF in accordance with Section 13.4 but unilaterally determines not to proceed to purchase the SEF, then Gallup shall be responsible for payment of the costs and expenses of any appraiser or

appraisers. Each Party shall remain responsible for payment of the costs and expenses of any appraiser or appraisers in accordance with Section 13.5 if Gallup and Seller cannot agree to any Proposed Purchase Price.

13.4 Calculation of Proposed Purchase Price. The proposed purchase price (the ***“Proposed Purchase Price”***) for the SEF Assets shall be equal to the Fair Market Value as determined by the Independent Appraiser or, as appropriate, the Designated Appraisers. Notwithstanding, if either Party determines that the Fair Market Value is not an acceptable price for the SEF, such Party shall not be obligated to either buy or sell the SEF, as the case may be.

13.5 Costs and Expenses of Independent Appraiser and Designated Appraisers. Seller and Gallup shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser. In the event the Parties cannot agree upon an Independent Appraiser, then each shall be responsible for the costs and expenses of its selected designated appraiser and one half of the costs and expenses of the third designated appraiser.

13.6 Purchase of SEF.

(a) If both Gallup and Seller agree to the Proposed Purchase Price, Gallup shall have twenty (20) Business Days from the date of the Final Determination (such period, the ***“Exercise Period”***), to give notice of its intent to purchase the SEF at the Proposed Purchase Price (an ***“Exercise Notice”***) to Seller. Once Gallup delivers the Exercise Notice to Seller, Gallup shall become obligated to purchase, and Seller shall become obligated to sell, the SEF for the Proposed Purchase Price (which shall, thereafter and below, be referred to as the ***“Purchase Price”***).

(b) Terms of SEF Purchase. On the Transfer Date (a) Seller shall surrender and transfer to Gallup on an as-is, where-is basis, but free of liens and encumbrances, all of Seller’s right, title and interest in and to all SEF Assets and shall retain all liabilities arising from or related to the SEF Assets prior to the Transfer Date, (b) Gallup shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the SEF Assets from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the SEF Assets in Gallup, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the SEF Assets to Gallup.

13.7 Transfer Date. The closing of any sale of the SEF (the ***“Transfer Date”***) pursuant to this Article 13 will occur no later than sixty (60) Business Days following the date of delivery of the Exercise Notice to Seller.

ARTICLE 14. CONFIDENTIALITY; PUBLICITY

14.1 Confidentiality.

(a) Neither Party will use any Confidential Information for any purpose except such Party’s performance under this PPA. Furthermore, neither Party will disclose any Confidential Information to any third party (other than (and then only for purposes permitted by this PPA or required under the New Mexico Inspection of Public Records Act) the Party’s or its

Affiliates' officers, employees, actual and potential sources of debt and equity financing, counsel, accountants or advisors (collectively, "**Representatives**") who have a need to know such information for the purposes permitted by this section and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein) except in order to comply with the requirements of any applicable Law or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a Governmental Entity; *provided, however*, that each Party will use reasonable efforts to prevent or limit any such disclosure. "**Confidential Information**" means information provided by one Party to the other in connection with the negotiation or performance of this PPA that is clearly labeled or designated by the disclosing party as "confidential" or "proprietary" or with words of like meaning or, if disclosed orally, clearly identified as confidential with that status confirmed promptly thereafter in writing.

(b) Notwithstanding anything to the contrary contained herein, in order for the transactions contemplated by this PPA not to be considered a "Confidential Transaction" within the meaning of United States Treasury Regulation 1.6011-4(b)(3), the Parties (and each Representative of the Parties) may (a) consult any tax advisor/consultant regarding the tax treatment and tax structure relating to the transactions contemplated by this PPA, and (b) may at any time disclose to any Person, without limitation of any kind, the tax treatment and tax structure of the transactions contemplated by this PPA and all materials of any kind (including tax opinions or other tax analysis) that are provided relating to such tax treatment or tax structure.

(c) The obligations of the Parties under this Article 14 will survive for a period of two (2) years from and after the termination of the transaction to which any Confidential Information relates.

14.2 Publicity.

(a) The Parties agree they will, from time to time, issue written press releases regarding the SEF and that they shall cooperate with each other in connection with the issuance of such written releases. Nothing in this Section 14.2 shall be construed as a limitation on Gallup's elected or appointed officials to respond to questions or inquiries from members of the public or others concerning the SEF in accordance with Section 14.2(c).

(b) Subject only to the provisions on confidential information in Section 14.1 above, Seller shall have the right to publish any information or statement related to the SEF on its website (or the website of an Affiliate) and through other forms of media. Such information may include, but is not limited to, the location of the SEF, the name of Gallup and other features of the SEF.

(c) Gallup shall have the right to publicize, without prior approval by Seller, that it is serving as a "solar host" for the SEF *provided, however*, such publicity shall not in any way claim ownership over the SEF nor shall it in any way claim ownership over the Environmental Incentives or Environmental Attributes. Additionally, Gallup shall have the right to display photographs of the SEF in its advertising and promotional materials, provided, that any such materials identify Seller as the "developer, Seller and operator" of the SEF.

ARTICLE 15. DISPUTE RESOLUTION

15.1 The Parties, through their respective authorized representative, shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this PPA (a “*Dispute*”) within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

15.2 In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 15.1, both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

15.3 A notice of dispute shall not be considered a notice of default as described in Section 9.2. The parties will endeavor to settle disputes amicably prior to giving such notice.

15.4 Any legal action or proceeding brought by either of the Parties against the other Party with respect to this PPA or the transactions in connection with or relating hereto, will be brought in the courts of the State of New Mexico in the Second Judicial District and, by execution and delivery of this PPA, each of the Parties hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid court and waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and any claim that such proceedings have been brought in an inconvenient forum. Each of the Parties agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon each of the Parties, and may be enforced in any other jurisdiction, by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

ARTICLE 16. NOTICES

16.1 Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing except where this PPA expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, or by facsimile, . Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile unless confirmation of successful transmission is received. When notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

Gallup:

Richard Matzke
Electric Director
City of Gallup
110 W. Aztec Avenue
Gallup, NM 87301
(505) 863-1285
rmatzke@gallupnm.gov

Seller:

Mangan Renewables LLC
3901 Via Oro Avenue
Long Beach, CA 90810
Telephone: (310) 835-8080
rseward@manganinc.com
Attention: CFO

**ARTICLE 17.
ASSIGNMENT; FINANCING**

17.1 Assignment.

(a) Upon COD, Gallup expressly consents to Seller's assignment of its rights, duties and obligations under this PPA to:

Name GallupPV, LLC, a New Mexico limited liability company (or other Single Purpose Entity to be formed by Wisser Capital, LLC for the purposes contemplated under this Agreement)

Address 2020 Alameda Padre Serra, Suite 220, Santa Barbara, CA 93103

Telephone/E-Mail (805) 899-3400 / sch@wisercapital.com

(b) For any assignment other than the assignment described in Section 17.1(a) above, Seller shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this PPA and the Lease Agreement with the prior written consent of Gallup which shall not be unreasonably withheld, *provided, however*, that any such assignee pursuant to this clause shall agree to be bound by the terms and conditions hereof.. Seller shall notify Gallup in writing at least thirty (30) days prior to any assignment of its rights, duties or obligations under this PPA and the Lease Agreement.

(c) This PPA will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

(d) Seller shall provide written notice of assignment to Gallup, which notice shall identify the proposed assignee, its state of incorporation or organization, its managing member or equivalent officer or entity, all contact information and such other information as is readily available to Seller concerning the proposed assignee.

17.2 Financing.

(a) Seller may pledge its interest in this PPA, including any rights to payment, and the SEF, as security for loans or financing. If any of Seller's Financing Parties requests any

amendments or clarifications to the terms and conditions of this PPA, with the prior written consent of Gallup, which consent shall not to be unreasonably withheld. Gallup agrees to reasonable cooperate with Seller if any of Seller's Financing Party's request any amendments or clarifications to the term and conditions of this PPA.

(b) Gallup acknowledges that Seller will be financing the acquisition and installation of the SEF with financing accommodations from one or more financial institutions and that Seller's obligations thereunder will be secured by, among other collateral, a pledge or collateral assignment of this PPA and Seller's rights to payment and a first priority security interest in the SEF or may, in connection with a sale and leaseback, be transferred to a purchaser of the SEF who leases it back to Seller. In order to facilitate such necessary financing, Gallup acknowledges that it has been advised that part of the collateral securing financial accommodations of Seller is the granting of a first priority security interest in the SEF to Seller's Financing Parties to be perfected by a filing under the Uniform Commercial Code (UCC) and to be documented in a recorded notice on title to the SEF. Gallup agrees to such filings so long as they reflect the Parties' agreement that any filing to perfect or provide notice of such security interest clearly documents the Parties' intent that the SEF is considered personal property only, is not considered a fixture to the Property, and that Gallup's Property is not encumbered in any manner by any security interest in the SEF held by Seller's Financing Parties.

(c) Gallup agrees that upon Seller's request it will use commercially reasonable efforts to confirm the ownership of the SEF by Seller and/or Seller's Financing Parties, the existence of Seller's Financing Parties' security interest and the fact that the SEF is not part of the Property or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.

17.3 Additional Cooperation with Financing. Gallup acknowledges that Seller will be financing the development, acquisition, installation and/or operation of the SEF and Gallup agrees that it shall reasonably cooperate with Seller and Seller's Financing Parties in connection with such financing for the SEF, including without limitation by (i) furnishing such information, including but not limited to the Financial Statements, as may be reasonably requested by Seller or Seller's Financing Parties, (ii) delivering a consent to sale or alternative documentation as may be reasonably requested by Seller's Financing Parties; and (iii) providing such opinions of counsel and other matters as Seller or Seller's Financing Parties may reasonably request.

17.4 Subordination and Non-Disturbance Agreement. If the Property is encumbered by a mortgage and/or ground lease, Gallup shall obtain and furnish to Seller a reasonably satisfactory non-disturbance agreement from each mortgagee, in recordable form.

ARTICLE 18. MISCELLANEOUS

18.1 Governing Law. This PPA will be governed by the Laws of the State of New Mexico, without giving effect to principles of conflicts of laws.

18.2 Entire Agreement; Amendments. This PPA (including the exhibits, schedules and any written supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. This PPA shall be governed and construed and enforced in accordance with the laws of the State of New Mexico. Except as otherwise expressly provided in this PPA,

in order to be effective, any amendment, modification or change to this PPA must be in writing and executed by both Parties.

18.3 Non-Waiver. No failure or delay by either Party in exercising any right, power, privilege or remedy hereunder will operate as a waiver thereof. No waiver by either party of a breach of any term or provision contained herein shall be effective unless signed and in writing by the waiving party. No consent by either party to, or waiver of, a breach by either Party, whether express or implied, shall be construed, operate as or constitute a consent to, waiver of or excuse of any other or subsequent or succeeding breach by either Party.

18.4 Severability. If any part, term, or provision of this PPA is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term or provision of this PPA, and shall not render this PPA unenforceable or invalid as a whole. Rather the part of this PPA that is found invalid or unenforceable will be amended, changed or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this PPA will remain in full force and effect.

18.5 No Third Party Beneficiaries. Nothing in this PPA will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, except with respect to Seller's Financing Parties to the extent expressly provided herein.

18.6 No Recourse to Affiliates. This PPA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

18.7 Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint ventures or agents of each other for any purpose, unless expressly stated otherwise herein.

18.8 Counterparts. This PPA may be executed in one or more counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this PPA received by either Party by facsimile transmission or electronic signature is binding upon the other Party as an original.

18.9 Further Assurances.

(a) The Parties acknowledge that adjustments in the terms and conditions of this PPA may be appropriate to account for rule changes in the respective Utility or Utility control areas, by the respective independent system operators, or their successors, [or to comply with conditions or requirements imposed in connection with any Governmental Approval pursuant to Section 6-23-5 NMSA 1978] that could not be anticipated at the date of execution of this PPA or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable modifications or amendments as are reasonably required to comply therewith.

(b) The Parties shall, at their own cost and expense, do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this PPA.

18.10 General Interpretation. The terms of this PPA have been negotiated by the Parties hereto and the language used in this PPA shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This PPA shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the Party receiving a particular benefit under the PPA. No rule of strict construction will be applied against any Person.

[SIGNATURE PAGE FOLLOWS]

Intending to be legally bound, Seller and Gallup have signed this Power Purchase Agreement through their duly authorized representatives effective as of the date set forth by their respective signatures below.

“SELLER:”

Date: _____

MANGAN RENEWABLES
a California Corporation

By: _____
Name:
Title:

“GALLUP:”

Date: _____

City of Gallup, New Mexico,
a Municipality in the State of New Mexico

By: _____
Name:
Title:

Exhibit A-1

PRELIMINARY

GENERAL SEF SYSTEM DESCRIPTION

PV SOLAR ARRAY #1

BY MANGAN

Gallup PPA

General SEF System Description, PV Solar Array #1

The SEF system will be a 4.0 MW AC, 4.9 MW DC solar PV system with interconnection to a 13.8 kV utility line. The solar panels will be installed on a 1-axis tracker, North-South oriented.

System Specification

- (14,448) 340W solar panels
- (2) 2,000 kW inverters
- (2) 2,000kVA 13.8kV transformers
- (1) 15kV AC switchgear with system protection for metering and interconnection to the utility grid
- Combiner boxes with disconnect
- Aluminum wires for AWG #2 and larger; Copper wires for AWG #10 and smaller
- 1-axis tracker system with one panel portrait
 - o Minimum 4 ft clearance
 - o The tracker system has its own power for the motor
 - o Control for following the sun East-West
- Equipment pads for Inverters and Transformers
 - o Minimum 4 ft elevated
- Concrete pad for Switchgear

Preliminary Single Line Diagram

SEF SYSTEM - SOLAR PV ARRAY #1

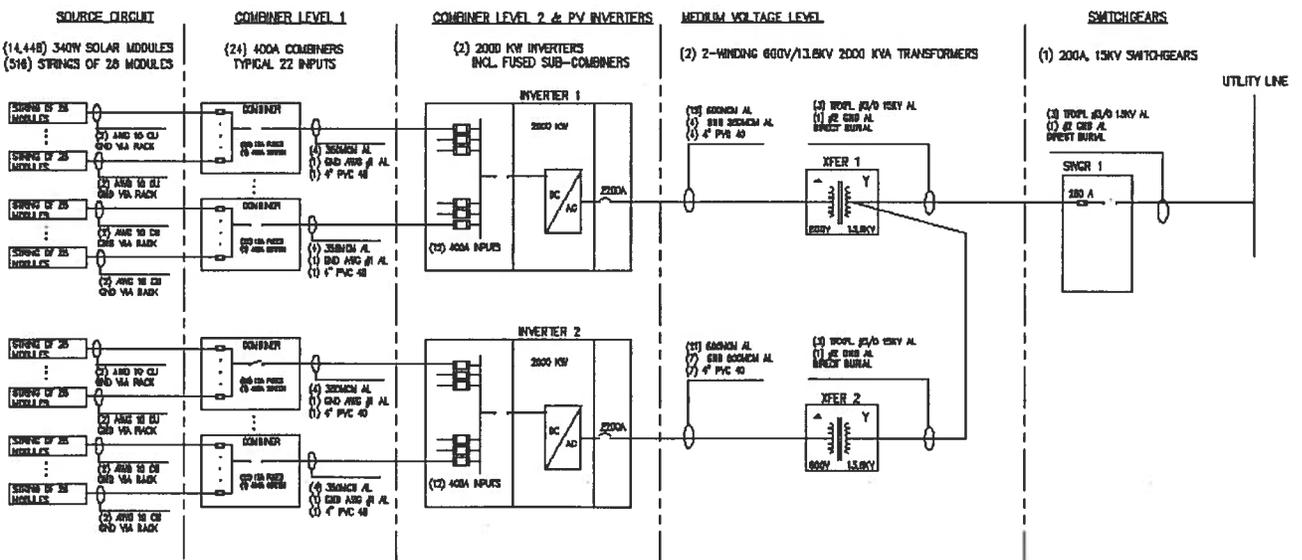


Exhibit A-2

PRELIMINARY

GENERAL SEF SYSTEM DESCRIPTION

PV SOLAR ARRAY #2

BY MANGAN

EXHIBIT B

LEGAL DESCRIPTION OF SITE PROPERTY

Lot 3-B as the same is shown and depicted on the Allison Right of Way Subdivision Plat Map recorded as Document #377,043 of the records of the Clerk of McKinley County on August 1, 2016, containing 91.6137 acres more or less;

Together with the right of ingress and egress from the new alignment of the Allison Road, presently under construction, over Tract 1-C of the Airport Land Annexation, as the same is shown on said Subdivision Plat Map.

EXHIBIT C

DEFINITIONS AND RULES OF INTERPRETATION

1. **Definitions.** The definitions provided below and elsewhere in this PPA will apply to the defined terms used in this PPA:

(a) **"Affiliate"** means, with respect to any entity, such entity's general partner or manager, or any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

(b) **"Array"** means each operating solar array which consists of modules and inverters that interconnect to a single point of interconnection and serve a customer load located on an individual meter.

(c) **"Array Loss"** means loss, theft, damage or destruction of the Array or SEF Assets, or any other occurrence or event that prevents or limits the Array from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure).

(d) **"Bankrupt"** means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within forty-five (45) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets except for, with respect to Seller, any enforcement of rights by Seller's Financing Parties pursuant to the Financing Documents; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(e) **"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

(f) **"Claiming Party"** shall have the meaning ascribed to it in Section 8.4 of the PPA.

(g) **"Code"** means the Internal Revenue Code of 1986, as amended.

(h) **"Commercial Operation"** means that the subject Array is ready for regular, daily operation, has been connected to the Property electrical system, has undergone testing as provided herein, is in compliance with applicable Laws in all respects and is capable of producing Energy Output.

- (i) **“Commercial Operation Date”** means the first day on which the subject Array is ready for Commercial Operation as certified in writing by Seller to Gallup in the applicable Notice of Commercial Operation.
- (j) **“Confidential Information”** shall have the meaning ascribed to it in Section 14.1(a) of the PPA.
- (k) **“Contract Year”** means the consecutive 12 month period commencing on the first Commercial Operation Date.
- (l) **“Costs”** means (i) all reasonable attorneys’ fees and expenses incurred by the relevant Party in connection with the termination of this PPA and (ii) all reasonable costs and expenses incurred by the relevant Party in removal of the Array from the Property; provided that in the case of clauses (i) and (ii), the relevant Party uses commercially reasonable effort to mitigate such Costs.
- (m) **“Credit Rating”** shall mean, with respect to any entity on any date of determination, the respective rating then assigned to its unsecured and senior long-term debt or deposit obligations (not supported by third party credit enhancement) by a national rating agency, such as Standard & Poor’s Ratings Services (a division of McGraw Hill), Moody’s Investors Service, Inc., Fitch Ratings, Dun & Bradstreet, or their respective successors.
- (n) **“DAS”** shall have the meanings ascribed to it in Exhibit G-1 hereto.
- (o) **“Defaulting Party”** shall have the meaning ascribed to it in Section 9.1 of the PPA.
- (p) **“Delivery Point”** means the agreed location or locations where Energy Output is to be delivered and received under this PPA (Gallup’s side of the meter(s)), and specifically the electrical tie-in point(s) between the SEF and the Property.
- (q) **“Dispute”** shall have the meaning ascribed to it in Section 15.1 of the PPA.
- (r) **“Effective Date”** shall have the meaning ascribed to it in the preamble of the PPA.
- (s) **“Energy”** means electric energy (alternating current, expressed in kilowatt-hours).
- (t) **“Energy Deficiency Quantity”** shall have the meaning ascribed to it in Section 7.3(c)(v) of the PPA.
- (u) **“Energy Output”** means the actual and verifiable amount of Energy generated by the SEF and delivered to Gallup at the Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device. The Energy Output delivered to Gallup at the Delivery Point shall be deemed to be equal to the energy measured at the Metering Device; actual energy losses between the Metering Device and the Delivery Point shall not affect the Energy Output.
- (v) **“Energy Rate”** shall have the meanings ascribed to it in Section 4.3 of the PPA.
- (w) **“Energy Surplus Quantity”** shall have the meaning ascribed to it in Section 7.3(c)(v) of the PPA.
- (x) **“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the SEF, and its displacement of conventional Energy generation. Environmental Attributes include, but are not limited to (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s

climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Seller, any Affiliate, or any investor of Seller to any Affiliate. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the SEF, (ii) emission reduction credits encumbered or used by the SEF for compliance with local, state, or federal operating and/or air quality permits, and (iii) Environmental Incentives.

(y) **“Environmental Incentives”** means any and all (i) investment tax credits attributable to the SEF, any SEF Asset or Energy Output, (ii) production tax credits attributable to the SEF, any SEF Asset or Energy Output, (iii) accelerated depreciation attributable to the SEF, any SEF Asset or Energy Output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source, (v) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels, (vi) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits and (vii) other financial incentives in the form of credits, tax write-offs, reductions, or allowances under applicable Law attributable to the SEF, any SEF Asset or Energy Output, irrespective of whether such Environmental Incentives accrue for the benefit of Seller, any Affiliate or any investor of Seller or its Affiliate.

(z) **“Event of Default”** shall have the meaning ascribed to it in Section 9.1 of the PPA.

(aa) **“Exercise Notice”** shall have the meaning ascribed to it in Section 13.6(a) of the PPA.

(bb) **“Exercise Period”** shall have the meaning ascribed to it in Section 13.6(a) of the PPA.

(cc) **“Fair Market Value”** means the value of the SEF determined by an Independent Appraiser based on either (a) the equipment value of solar energy facilities located in geographical proximity to the SEF and comparable in age, size, condition and actual average annual energy production.

(dd) **“Final Determination”** shall have the meaning ascribed to it in Section 13.3(b) of the PPA.

(ee) **“Financial Statements”** means with respect to a Party, such Party’s most recently available audited balance sheet and statement of income and cash flows as provided in the most recently available audited report, prepared in accordance with generally accepted accounting principles (GAAP) and/or Public Accounting principles.

(ff) **“Financing Documents”** means the loan and credit agreements, notes, bonds, indentures, security agreements, lease or license financing agreements, purchase agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the SEF, even if more than one financing arrangement exists at any time and even if the financing arrangements are of different tiers or tranches, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications or supplements to the foregoing that may be entered into from time to time.

(gg) **“Force Majeure”** means any event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not within the reasonable control, or is not the result of the negligence, of the Claiming Party, examples of ‘not within the reasonable control’ include, but are not limited to, lightning, blizzard, hurricane, earthquake, volcano, war, strikes, fires, floods, acts of God, and civil disobedience, and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on (i) Gallup’s inability economically to use

Energy purchased hereunder or to pay amounts owed hereunder or (ii) Seller's ability to sell Energy at a price greater than the price of Energy Output under this PPA.

(hh) **"General SEF Description"** means the conceptual design of the SEF as of the Effective Date. After the Effective Date, the Parties shall continue to work to refine and finalize the SEF General Description.

(ii) **"Governmental Approvals"** shall have the meaning ascribed to it in Section 3.1(d) of the PPA and shall specifically include approval of the PPA by the governing body of Gallup pursuant to Section 6-23-5(A) NMSA 1978.

(jj) **"Governmental Charges"** means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy Output of this PPA.

(kk) **"Governmental Entity"** means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(ll) **"Gallup"** shall have the meaning ascribed to it in the preamble of the PPA.

(mm) **"Gallup Misconduct"** shall have the meaning ascribed to it in Section 8.2(a) of the PPA.

(nn) **"Termination Payment"** means the amount stated on the Termination Payment *Schedule* attached to this PPA as Exhibit D for any given Contract Year. This amount will be paid in accordance with the terms of this Agreement

(oo) **"Indemnitee"** shall have the meaning ascribed to it in Section 12.1 of the PPA.

(pp) **"Indemnitor"** shall have the meaning ascribed to it in Section 12.1 of the PPA.

(qq) **"Indemnity Claims"** means all losses, liabilities, damages, costs, expenses and attorneys' fees, whether incurred by settlement or otherwise, related to injury to persons or damage to property.

(rr) **"Independent Appraiser"** means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the SEF. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or an employee of, or directly or indirectly retained as consultant or adviser to, Seller or any Affiliate of Seller or Gallup or any Affiliate of Gallup.

(ss) **"Initial Term"** shall have the meaning ascribed to it in Section 2.1(a) of the PPA.

(tt) **"kWh"** means kilowatt hours, the measurement for energy.

(uu) **"Late Payment Interest Rate"** means, for any date, the lesser of (i) the per annum rate of interest equal to the Prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or, if not published on such day, on the most recent preceding day on which published), plus 4% and (ii) the maximum rate permitted by applicable Law.

(vv) **“Law”** means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this PPA or the transaction contemplated hereby.

(ww) **“Lease Agreement”** means the Solar Site Lease Agreement attached and incorporated hereto as Exhibit I.

(xx) **“Metering Device”** means any and all meters at or before the Delivery Point needed for the registration, recording and transmission of information regarding the Energy Output generated by the SEF.

(yy) **“Non-Defaulting Party”** shall have the meaning ascribed to it in Section 9.1(a) of the PPA.

(zz) **“Notice of Commercial Operation”** shall have the meaning ascribed to it in Section 2.5 of the PPA.

(aaa) **“Parties”** shall have the meaning ascribed to it in the preamble of the PPA.

(bbb) **“Party”** shall have the meaning ascribed to it in the preamble of the PPA.

(ccc) **“Performance Guarantee”** shall have the meaning ascribed to it in Exhibit G-1 hereto.

(ddd) **“Person”** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Entity, limited liability company, or any other entity of whatever nature.

(eee) **“PPA”** shall have the meaning ascribed to it in the preamble of the PPA.

(fff) **“Preliminary Determination”** shall have the meaning ascribed to it in Section 13.3(a) of the PPA.

(ggg) **“Property”** shall have the meaning ascribed to it in each exhibit which describes the location of an Array.

(hhh)

“Proposal” means the Seller’s Proposal submitted in response to the RFP and the responses submitted by the Seller including (a) responses to Gallup’s (i) Requests for Clarifications; and (ii) Interview Questions and (b) all clarifying documents and correspondence from the Seller to Gallup. The Proposal is attached hereto as Appendix B and made a part hereof. The Proposal is intended to be used for background and interpretation purposes in the event of any ambiguity in this Agreement; provided, however, that in the event of a conflict between the Proposal and the terms and conditions of this Agreement (including all Exhibits and Appendices thereto other than the Proposal), this Agreement shall be controlling.

(iii) **“Proposed Purchase Price”** shall have the meaning ascribed to it in Section 13.4 of the PPA.

(iii) **“Purchase Offer”** shall have the meaning ascribed to it in Section 13.1 of the PPA.

(kkk) **“Purchase Price”** shall have the meaning ascribed to it in Section 13.6 of the PPA.

(lll) **“Renewable Energy Credits”** means certificates, green tags, or other transferable indicia indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to all of the Energy Output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a governmental authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification

Program, National Standard Version 1.3 administered by the Center of Resource Solutions); *excluding, however*, all Environmental Incentives.

(mmm) **“Reporting Rights”** means the right of Seller to report to any Governmental Entity, utility or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Seller owns the Environmental Attributes and the Environmental Incentives associated with the Energy Output.

(nnn) **“Representatives”** shall have the meaning ascribed to it in Section 14.1(a) of the PPA.

(ooo) **“RFP”** means Request for Proposals for _____ dated _____ and all addenda, Requests for Clarifications and Interview Questions. The RFP is attached hereto as Appendix B and made a part hereof. The RFP is intended to be used for background and interpretation purposes in the event of any ambiguity in this Agreement; provided, however, that in the event of a conflict between the RFP and the terms and conditions of this Agreement (including all Exhibits and Appendices thereto other than the RFP), this Agreement shall be controlling.

(ppp) **“SEF”** means the solar electric generating facility that produces the Energy Output sold and purchased under this PPA.

(qqq) **“SEF Assets”** means each and all of the assets of which the SEF is comprised, including Seller’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Property, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the SEF.

(rrr) **“Seller”** shall have the meaning ascribed to it in the preamble of the PPA.

(sss) **“Seller’s Financing Parties”** means any Persons, and their permitted successors and assignees, providing funding in connection with any development, bridge, construction, permanent debt or tax equity financing or refinancing for the SEF.

(ttt) **“Term”** means the Initial Term as described in Section 2.1 (a) of the PPA.

(uuu) **“Third Party Monitoring and Reporting Service Provider”** means an unaffiliated third party, selected in each case by Seller, that reads and reports the Energy Output as recorded by the specified Metering Device.

(vvv) **“Transfer Date”** shall have the meaning ascribed to it in Section 13.7 of the PPA.

(www) **“Utility Documents”** shall have the meaning ascribed to it in Section 3.1(e) of the PPA.

2. Rules of Interpretation. In this PPA, unless expressly provided otherwise:

(a) the words “herein”, “hereunder” and “hereof” refer to the provisions of this PPA and a reference to a recital, Article, Section, subsection or paragraph of this PPA or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this PPA or other agreement in which it is used unless otherwise stated;

(b) references to this PPA, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;

(c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;

(d) a reference to this PPA, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this PPA or such other agreement, instrument or provision, as the case may be;

(e) a reference to a statute or other Law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, Law or provision;

(f) the singular includes the plural and vice versa;

(g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;

(h) words of any gender shall include the corresponding words of the other gender;

(i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;

(j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");

(k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;

(m) if the time for performing an obligation under this PPA expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(n) a reference to (i) a day is a reference to a calendar day unless the defined term "Business Day" is used, (ii) a month is a reference to a calendar month and (iii) a year is a reference to a calendar year;

(o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;

(p) a reference to time is a reference to the time in effect in San Francisco, California on the relevant date except where specifically stated, e.g., local time in Albuquerque (Sections 2.1 (a) and (b)); and,

(q) if a payment prescribed under this PPA to be made by a Party on or by a given Business Day is made after 5:00 pm on such Business Day, it is taken to be made on the next Business Day.

EXHIBIT D

TERMINATION PAYMENT SCHEDULE

Contract Year	Termination Payment (\$)
1	N/A
2	N/A
3	N/A
4	N/A
5	N/A
6	N/A
7	\$7,152,723
8	\$7,020,361
9	\$6,878,996
10	\$6,724,529
11	\$6,555,232
12	\$6,366,308
13	\$6,160,868
14	\$5,933,895

15	\$5,682,567
16	\$5,401,000
17	\$5,090,515
18	\$4,744,855
19	\$4,359,313
20	\$3,925,952
21	\$3,443,995
22	\$2,904,372
23	\$2,299,564
24	\$1,618,398
25	\$856,284

EXHIBIT E

INSURANCE REQUIREMENTS

GENERAL LIABILITY

1. Requirements Applicable to Seller. Seller shall maintain during the Term of this PPA (or any extensions thereof), the insurance coverage outlined below, and all such other insurance as required by applicable law. Evidence of coverage will be provided to the other party and Seller's Financing Parties on an annual basis, prior to each renewal date, via a Certificate of Insurance as specified below.

All Insurance Carriers will be rated A- VIII or better by A.M. Best Company:

- a. Commercial General Liability with limits of:
 - i. **\$1,000,000** per occurrence for 3rd Party Bodily Injury & Property Damage
 - ii. **\$2,000,000** per occurrence for Products Completed Operations
 - iii. **\$2,000,000** General Aggregate
 - iv. Coverage to be written on an Occurrence form basis, including (1) Broad Form Contractual Liability and (2) provisions for severability of interest
 - v. Seller shall include Gallup and Seller's Financing Parties as Additional Insureds with respect to the insurance required under this PPA. The Additional Insured shall be on ISO forms CG 20 11 07 04 and 20 37 97 04 or equivalent.
 - vi. Any other insurance required for financing of the SEF, including flood insurance.
 - vii. The policy should provide that the coverage is Primary and Non-Contributory with any other available insurance of the other party and/or of Seller's Financing Parties.
 - viii. Seller will provide Gallup with 30 days advance notice of cancellation or non-renewal (10 days for non-payment of premium).

- b. Automobile Liability with limits of:
 - i. not less than **\$1,000,000** combined single limit of liability for bodily injury, including death, and property damage in any one occurrence.
 - ii. Said policy of insurance must include coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work.

- c. Excess/Umbrella Liability Policy with minimum limits of:

- i. **\$1,000,000** per occurrence for 3rd Party Bodily Injury and Property Damage
 - ii. **\$2,000,000** General Aggregate - other than Products/Completed Operations
 - iii. Coverage terms and limits to apply excess of the primary per occurrence and/or aggregate limits provided for in the Commercial General Liability, Auto Liability and Employers' Liability coverage.
- d. Workers' Compensation/Employers Liability limits as follows:
 - i. Workers' Compensation – Statutory Coverage.
 - ii. Employers Liability
 - 1. Bodily Injury by accident \$ 1,000,000 each accident
 - 2. Bodily Injury by disease \$ 1,000,000 each employee
 - 3. Bodily Injury policy limit \$ 1,000,000 policy limit
 - iii. Policy shall include a blanket endorsement that provides a Waiver of Subrogation in favor of Seller and Seller's Financing Parties.

2. Requirements Applicable to Gallup. Gallup shall maintain general liability insurance in the amounts indicated above, or the maximum amount permitted under the New Mexico Tort Claims Act, Sections 41-4-1 through 41-4-30 NMSA 1978, whichever amount is less.

EXHIBIT F
CONSTRUCTION SCHEDULE

BY MANGAN

EXHIBIT G-1

PERFORMANCE GUARANTEE

The Seller agrees to provide a Performance Guarantee of the generation output of the SEF. The formula for the Performance Guarantee shall be the Difference between Actual kWh generation and Calculated kWh generation, adjusted for actual solar radiation, as the base for payments under the Performance Guarantee provision. This provision shall only apply when the Difference is a negative number. The Difference shall be calculated as follows:

$$\text{Difference} = [\text{Actual kWh}] - [\text{Calculated kWh}] \times ([\text{Actual Radiation}] / [\text{NREL Radiation}]) \times 90\% \times (1 - D_N)$$

Where

- “Difference” is calculated for each successive 12-month period commencing at the Commercial Operation Date.
- “Actual kWh” means the actual electricity produced over the Period as measured by the Metering Device and recorded and stored by a DAS - Data Acquisition System
- “Calculated kWh” means the amount of kWh as calculated using PVsyst energy simulation software degraded by 0.5% to adjust for the step-up transformer’s efficiency
- “Actual Radiation” means the amount of solar radiation measured over the Period by a Pyranometer or other acceptable device and recorded and stored by a DAS
- “NREL Radiation” means the amount of solar radiation of a Typical Year as published by NREL in the “National Solar Radiation Data Base, 1991 - 2010 Update” for the weather station in Gallup. The annual Effective Irradiation for a Typical Year in Gallup on a 30° tilted plane at 161° Azimuth is 2,164,915 W/m².
- “D_N” means the degradation in Period N as guaranteed by the solar panel manufacturer.

If Difference is negative the payment due to the City shall be calculated as follows:

$$\text{Performance Guarantee Payment} = - \text{Difference} \times \text{Energy Rate}$$

Where the “Energy Rate” means the cost of a kWh as defined in the PPA agreement.

The table below shows the Predicted Generation and the Guaranteed Generation under the Performance Guarantee.

Year	Predicted Generation (kWh)	Guaranteed Generation (kWh) ¹	Peak kW ²
1			
2			
3			
4			
5			
6			
7			

8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
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21			
22			
23			
24			
25			

Note 1: Production if the annual solar irradiation is equal to the Typical Year's irradiation

Note 2: Predicted maximum kW output

EXHIBIT H
LEASE AGREEMENT



Mayor Jackie McKinney
Councilor Linda Garcia, District 1
Councilor Allan Landavazo, District 2
Councilor Yogash Kumar, District 3
Councilor Fran Palochak, District 4

Maryann Ustick, City Manager
George W. Kozeliski, City Attorney

December 9, 2016

Mangan Renewables, LLC
3901 Via Oro Avenue
Long Beach, CA 90810

Re: This Lease dated _____, 2016 between the City of Gallup and Mangan Renewables, LLC (this "Lease") for the proposed Solar Energy Facility within: Lot 3-B as the same is shown and depicted on the Allison Right of Way Subdivision Plat Map recorded as Document #377,043 of the records of the Clerk of McKinley County on August 1, 2016, containing 91.6137 acres more or less

Dear _____:

Mangan Renewables, LLC ("Owner" or "Seller") and the City of Gallup ("Gallup" or "Host"), sometimes referred to individually as a "Party" and collectively as the "Parties," have entered into a Power Purchase Agreement (the "PPA"), pursuant to which Owner will build, finance, own, operate, and maintain a solar energy facility (the "SEF") at the above-referenced premises which Owner has a right of access pursuant to this Lease, and in accordance with the PPA. By signing below and returning this letter to us, you confirm that:

1. **Title to SEF.** Unless and until the SEF is sold to the Host as contemplated in Article 13 of the PPA or is assigned as provided in Article 17 of the PPA, notwithstanding the presence and operation of the SEF on the Property, Owner shall at all times retain title to and be the legal and beneficial owner of the SEF and all alterations, additions or improvements made thereto by Owner, and the SEF shall remain the property of Owner or Owner's assigns. In no event shall anyone claiming by, through or under the Host (including but not limited to any present or future mortgagee of the Property) have any rights in or to the SEF at any time other than as specified in the PPA. The Host acknowledges and agrees that Owner may be required to grant or cause to be granted to Owner's financing parties a security interest in the SEF and the Host expressly disclaims, waives and agrees not to assert any lien, security interest or any other rights it may have in the SEF, from time to time, pursuant to the PPA.
2. **Removal of SEF.** Owner shall, within one hundred fifty (150) days following the end of the Term, as defined by the PPA, or any termination of the PPA, at Owner's sole cost and expense, fully remove the SEF from the Property and fully restore the Property to its original condition, normal wear and tear excluded. Owner and its subcontractors, agents, consultants and representatives shall have access at all reasonable times to the Property and the SEF assets for purposes of such removal. Any SEF or Array shall be considered abandoned if not removed in accordance with Section 2.3 of the PPA.
3. **Lease.** For the Term of the PPA, or unless and until the SEF is sold to the Host as contemplated in Article 13 of the PPA or is assigned as provided in Article 17 of the PPA, and subject to the netting and offsets discussed herein, Owner or its designee (including finance providers) shall have the right, without cost, to lease only the premises shown and described in the site plan and survey attached hereto ("SEF Site")

in order to build, operate, inspect, maintain, and remove the SEF. A copy of the site plan and survey are attached hereto as Exhibit A and Exhibit B and incorporated herein by reference. Subject to the netting and offsets discussed herein, the Host will not charge Owner any rent for such right to lease or access the premises.

4. Access. For the Term of the PPA, or unless and until the SEF is sold to the Host as contemplated in Article 13 of the PPA or is assigned as provided in Article 17 of the PPA, Owner is allowed reasonable access to the SEF Site through transit of the Property. Owner and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times to the SEF Site for the purpose of planning, constructing, operating, inspecting, maintaining, repairing and removing the SEF, and to any documents, materials and records of the Host relating to the SEF Site that Owner reasonably requests in conjunction with these activities as follows:
 - a. **During Construction:** During the construction of the SEF, Owner and its sub-contractors, agents, consultants, and representatives will be provided badges for ingress and egress from the Property. Owner and its sub-contractors, agents, consultants, and representatives shall be required to observe all site traffic, safety, and security guidelines to be discussed during the preconstruction conference with the Host. Upon the completion of construction, Owner and its sub-contractors, agents, consultants, and representatives shall return all badges to the Host.
 - b. **Post construction, during routine quarterly operations and maintenance (“SEF O&M”):** For the duration of the SEF O&M contemplated under the terms of the PPA, Owner and its sub-contractors, agents, consultants, and representatives shall only be permitted access via Allison Road for entry. Owner and its sub-contractors, agents, consultants, and representatives, shall be required to indicate their intent to service the SEF to the Property operator. Upon entry to the Property, Owner and its sub-contractors, agents, consultants, and representatives are authorized to proceed directly to the SEF Site and shall have no access to any other parts of the Property. Owner and its sub-contractors, agents, consultants, and representatives shall notify the Host Customer’s Chief Engineer and/or Superintendent 24-hours in advance of arriving for an SEF O&M visit.
 - c. Owner shall also comply with all other reasonable access and notice procedures agreed upon between the Host and Owner from time to time in writing relating to activities conducted by or on behalf of Owner on the Property and relating to the SEF Site. During any such activities, Owner and its sub-contractors, agents, consultants and representatives, shall comply with Host’s reasonable safety and security procedures (as may be promulgated from time to time and communicated to Owner), and Owner and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to minimize interference with the Host’s nearby/adjacent activities to the extent reasonably practicable. Notwithstanding anything to the contrary in Section 6.2 of the PPA, Owner shall be allowed immediate access through the Property to the SEF Site in connection with any emergency condition then existing with respect to the SEF that could reasonably be expected to pose an imminent threat to the safety of persons or property.

5. Maintenance and Repair. Seller at its sole cost and expense, will construct a fence around the entire solar array. Seller shall bear all responsibility for the maintenance and repair of the fence. Gallup will be responsible for any necessary off-site or "outside the fence" distribution system components. Seller will be responsible for all "inside the fence" project components including the switchgear, transformation from the project voltage to 13.8 kV and necessary circuit/plant protection.
6. Netting and Setoff: The Parties may net any and all monetary obligations that are due and owing under the PPA and/or this Lease between the Parties. Accordingly, all amounts owed by each Party to the other Party under the PPA and/or this Lease, including any related damages caused by Owner's access, and any applicable interest, payments or credits, may be netted such that only the excess amount remaining due will be paid by the Party that owes it. Each Party shall have the right to set off any undisputed amount due and owing to such Party from the other Party under the PPA and/or this Lease against any undisputed amount due and owing from such Party to the other Party under this PPA and/or this Lease.
7. The Parties will not take any action inconsistent with the foregoing.

Very truly yours,

City of Gallup
Host

By: _____

ATTEST: _____
Alfred Abeita II, City Clerk

Acknowledged and agreed by:

Owner

By: _____

Discussion/Action Topic 3

**Approval of Budget Adjustment and Bid Award for the
Replacement of the Water Main Along Fifth Street From
Highway 66 Through Park Pump Station**

Dennis Romero, Water and Sanitation Director



SUBJECT: Request to Approve Budget Adjustment for Replacement of Water Main along 5th Street from Rt. 66 through Park Pump Station
DEPT. OF ORIGIN: Water and Sanitation
DATE SUBMITTED: December 8, 2016
SUBMITTED BY: Dennis Romero, P.E., Director

Summary

Due to two water main breaks beginning September 14th in the 16-inch water transmission line that feeds Grandview Tank, Utilities Staff requested a design to replace the 16-inch main from Rt. 66 to the Park Pump Station. A design was completed and a bid package let out. Bids were received and opened on December 6th (Bid Tabulation attached). The low bid on the project was submitted by Adame Construction, Inc. and is \$647,442.30 for the base bid, with a bid for the additive alternate of \$142,042.10, for a total bid of \$789,484.40. The Engineer's Opinion of Probable Construction Costs was \$597,235 for the base bid and \$125,263 for the additive alternate. The base bid consists of construction costs for the 16-inch water main from Rt. 66 to Park Ave (approximately 3,000 lineal feet of water main). The additive alternate consists of construction costs of the 16-inch main from the intersection of 5th Street and Park Ave. to the Park Pump Station (approximately 600 lineal feet of water main). The Water and Sanitation Department requests to use funds from the Water Enterprise Fund to complete these projects. As of August 2016, the Fund had \$6,244,434.45 cash on hand and was estimated to have an end of fiscal year balance of \$5,181,091.85 without taking these expenditures into account. An amount of \$479,733 was approved and has been expended to complete water main repairs at the 2nd Street Railroad Crossing and the Ellison Road Crossing. Taking these expenditures into account, if the Council were to approve the transfer of funds from the Water Enterprise Fund, there would be an approximate fiscal year-end balance of \$3,191,873.65 left in the Water Enterprise Fund.

Action requested to:

1. Budget adjustment / transfer from fund balance of 789,484.40 from Water Enterprise Fund to complete the 5th Street Water Main Project;
2. Approval of award of for Replacement of Water Main along 5th Street from Rt. 66 through Park Pump Station to Adame Construction, Inc.

Fiscal Impact:

Reviewed By: Charlotte Beckett
Finance Department

Attachments: (1) Bid Tabulation for Replacement of Water Main along 5th Street from Rt. 66 through Park Pump Station

Legal Review:

Approved As To Form: _____

[Signature]
City Attorney

Recommendation: Recommend approval of requested actions:

1. Budget adjustment / transfer from fund balance of 789,484.40 from Water Enterprise Fund to complete the 5th Street Water Main Project;
2. Approval of award of for Replacement of Water Main along 5th Street from Rt. 66 through Park Pump Station to Adame Construction, Inc.

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:	_____

**CITY OF GALLUP
PURCHASING DEPARTMENT -- TABULATION SHEET(S)
BID NO. JU1652**

Open Date: December 6, 2016 at 2:00 P.M. (Local)

BID ON: Emergency 5th Street Water Main

Items and Descriptions	Adame Construction Inc. 13 Bonita Vista Blvd Los Lunas, NM 8031	NM Underground Utilities, Inc. 6201 Industry Way SE Albuquerque, NM 87105	A.A.C. Construction, LLC 18 La Luna Rd Santa Fe, NM 87507	GandyDancer, LLC 5801 Bobby Foster Rd SE Albuquerque, NM 87105	Kinkaid Civil Construction, LLC 4505 E Virginia Str Mesa, AZ 85215
1	BASE BID	597,754.00	603,752.00	671,350.00	804,145.00
	NMGRT 8.3125%	49,688.30	50,186.89	55,805.97	66,844.55
	TOTAL BASE BID	647,442.30	653,938.89	727,155.97	870,989.55
2	ADDITIVE ALTERNATE	131,141.00	132,778.00	149,550.00	155,096.00
	NMGRT 8.3125%	10,901.10	11,037.17	12,431.34	12,892.36
	TOTAL ADDITIVE ALTERNATE BID	142,042.10	143,815.17	161,981.34	167,988.36
	TOTAL PROJECT COST (BASE BID & ADDITIVE ALTERNATE)	789,484.40	797,754.06	889,137.31	1,038,977.91
	TOTAL W/PREFERENCE ADJUSTMENT	Resident-5% 692,450.25	Resident-5% 699,703.50	Resident-5% 779,855.00	Resident-5% 1,337,671.25
	NM State Resident Preference Certificate	Yes	Yes	Yes	Yes
	NM Veteran's Resident Preference Certificate	No	No	No	Yes
	Bid Bond	Yes	Yes	Yes	Yes
	Subcontractor Listing	Yes	Yes	Yes	Yes
	Acknowledgement of Amendments	Yes	Yes	Yes	Yes

**CITY OF GALLUP
PURCHASING DEPARTMENT -- TABULATION SHEET(S)
BID NO. JU1652 BID ON: Emergency 5th Street Water Main**

Open Date: December 6, 2016 at 2:00 P.M. (Local)

Items and Descriptions	Desert Utility & Paving, LLC 8201 Golf Course RD NW Suite D3-295 Albuquerque, NM 87120	Dallago Corporation 2411 E. Aztec Avenue Gallup, NM 87301	TLC Plumbing & Utility 5000 Edith Blvd NE Albuquerque, NM 87107	Smithco Construction, Inc. 6 King Canyon Loop Caballo, NM 87931	
1	BASE BID	912,209.00	610,000.00	928,983.26	624,500.00
	NMGRT 8.3125%	75,827.37	50,706.25	77,221.73	51,911.56
	TOTAL BASE BID	988,036.37	660,706.25	1,006,204.99	676,411.56
2	ADDITIVE ALTERNATE	196,300.00	130,000.00	195,868.02	133,100.00
	NMGRT 8.3125%	16,317.44	10,806.25	16,281.53	11,063.94
	TOTAL ADDITIVE ALTERNATE BID	212,617.44	140,806.25	212,149.55	144,163.94
	TOTAL PROJECT COST (BASE BID & ADDITIVE ALTERNATE)	1,200,653.81	801,512.50	1,218,354.54	820,575.50
	TOTAL W/PREFERENCE ADJUSTMENT	Resident-5% 1,053,083.55	N/A 740,000.00	Resident-5% 1,068,608.72	N/A 757,600.00
	NM State Resident Preference Certificate	Yes	No	Yes	No
	NM Veteran's Resident Preference Certificate	No	No	No	No
	Bid Bond	Yes	Yes	Yes	Yes
	Subcontractor Listing	Yes	Yes	Yes	Yes
	Acknowledgement of Amendments	Yes	Yes	Yes	Yes

Discussion/Action Topic 4

Ordinance No. C2016-13;
Amendments to Hillcrest Cemetery Ordinance

George Kozeliski, City Attorney



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: December 13, 2016

SUBJECT: Ordinance Amending the Hillcrest Cemetery Ordinance
DEPT. OF ORIGIN: City Attorney's Office
DATE SUBMITTED: December 8, 2016
SUBMITTED BY: George W. Kozeliski, City Attorney

Summary: During the past several years, the City of Gallup has taken over the opening and closing of graves at the City owned Hillcrest Cemetery. Since the City changed the rules regarding burials of more than one casket per lot, there has been an increased demand for the burial of cremains. The proposed Ordinance will allow up to six cremains per lot, or one casket and up to three cremains per lot.

Fiscal Impact: None.

Reviewed By: Charlotte Beckett
Finance Department

Attachments: Ordinance No. C2016-13.

Legal Review:

Approved As To Form: [Signature]
City Attorney

Recommendation: Approve Ordinance.

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. C 2016-13

AN ORDINANCE AMENDING TITLE 7, CHAPTER 4 TO THE CITY OF GALLUP MUNICIPAL CODE, BY AMENDING AND ADDING LANGUAGE TO SECTION 6 PERTAINING TO HILLCREST CEMETERY.

WHEREAS, the City of Gallup has in the past several years taken over the open and closing of graves at the City owned Hillcrest Cemetery; and

WHEREAS, the City has changed the rules regarding burials of more than one casket per lot, and there is now a demand for burial of cremains; and

WHEREAS, to better serve the citizens and spell out the procedures for the Cemetery and what is allowed.

NOW THEREFORE:

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NEW MEXICO, that Title 7 of the City code is amended to include the follow language.

(high-lighted in red).

7-4-6: INTERMENTS AND DISINTERMENTS:

A. Order For Opening Required; Notification, Time Limit: Graves will be opened on an order from an undertaker and owner of the lot, which order must be given to the **City caretaker** at least **three (3) days** ~~eight (8) hours~~ before the time set for the arrival of the funeral at the cemetery. No interments or disinterments will be permitted without such order.

B. Lot Line: All graves shall be at least six inches (6") within the line of the lot.

C. Contagious Disease; Safety Precautions: ~~Advance notice must be given to the caretaker of the intention to bury remains of any person who died of smallpox or other virulent, contagious disease, so that a proper time may be appointed and suitable arrangements made for the safety of employees and the public. Remains of persons dying from any contagious disease shall not be disinterred.~~ **The City must be notified in advance of any safety precautions that must be followed for a burial, and only allowed as provided by State or Federal laws, rules and regulations.**

D. Death Certificate: ~~No interments shall be made until the proper death certificate required by law and the information necessary to complete the records kept by the city clerk shall have been furnished. (1961 Code § 9-6-14)~~

~~E. More Than Two Persons Prohibited: Burials of more than one person in a grave is allowed, however no more than two (2) persons may be buried in a grave, and then only when the depth of the grave is such as to allow for proper burial and covering of soil as required by state regulations. (Ord. C2006-05, 4-25-2006)~~

(NEW SECTION D IN PLACE OF OLD SECTION E)

D. Number of Burials Per Lot: No more than two (2) persons buried in caskets are allowed per lot. One casket and up to three (3) cremains are allowed per lot, or up to Six (6) cremains are allowed per lot. Caskets must be buried to a depth as to allow for proper burial and covering of soil as required by state regulations.

- 1. Two (2) persons buried in caskets is only allowed if it is a new burial lot, in ground undisturbed at the effective date of this amendment to this ordinance. It is not permitted to remove a casket already buried to deepen the burial lot to allow for a second casket.**
- 2. Cremains to be buried where a casket is already buried, must be placed outside the casket.**

PASSED, ADOPTED AND APPROVED on this 13th day of December, 2016.

CITY OF GALLUP

Jackie McKinney, Mayor

ATTEST:

Alfred Abeita, City Clerk

Discussion/Action Topic 5

Resolution No. R2016-46;

**A Resolution Changing the Name of a Certain Street Within the City Limits
of the City of Gallup From Wilson Avenue to Black Diamond Canyon Drive**

George Kozeliski, City Attorney



CITY OF GALLUP

COUNCIL STAFF SUMMARY FORM
MEETING DATE: December 13, 2016

SUBJECT: Resolution changing a portion of Wilson Avenue to Black Diamond Canyon Drive
DEPT. OF ORIGIN: City Attorney's Office
DATE SUBMITTED: November 29, 2016
SUBMITTED BY: George W. Kozeliski, City Attorney

Summary: It has come to staff's attention that a portion of the street known as Black Canyon Diamond Drive is still named Wilson Avenue. In addition some maps of the City of Gallup show all of Black Diamond Canyon Drive as Wilson Avenue. As part of the federal program for addressing for E-911 purposes the residence east of Pershing have all been given Black Diamond Canyon Drive address and as a practical matter everyone on the street has used Black Diamond Canyon as their address for years.

Financial Impact: None

Approved: 
Finance Department

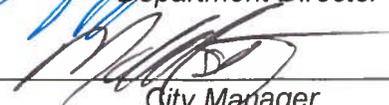
Attachments: Resolution R2016-46 and map of area

Legal Review: Drafted Resolution and recommends passage.

Approved As To Form: 
City Attorney

Recommendation: Pass Resolution R2016-46

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: _____

**CITY OF GALLUP
RESOLUTION
R2016-46**

**A RESOLUTION CHANGING THE NAME OF A CERTAIN STREET
WITHIN THE CITY LIMITS OF THE CITY OF GALLUP FROM WILSON
AVENUE TO BLACK DIAMOND CANYON DRIVE.**

WHEREAS, the street in question has been known as Black Diamond Canyon for decades; and

WHEREAS, in 2009, as part of the National Enhanced 911 services for addressing the addresses on a portion of this street where changed from “Wilson” to “Black Diamond Canyon” and since that time everyone east of Pershing Avenue has used the name Black Diamond Canyon Drive as their address; and,

WHEREAS, Wilson Avenue also continues to the east as an unimproved right of way, and further to the east becomes an actual improved street again; and,

WHEREAS, the City of Gallup needs to officially change the name of a portion of Wilson Avenue to Black Diamond Canyon Drive.

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

That portion of the present roadway known as Wilson Avenue that runs east from the intersection with Pershing Ave., located inside the city limits of the City of Gallup, New Mexico and which dead-ends at the Black Diamond Mobile Home Park located at the east end shall be named:

“BLACK DIAMOND CANYON DRIVE”

PASSED, ADOPTED AND APPROVED THIS ___ DAY OF DECEMBER, 2016.

City of Gallup, New Mexico

By: _____
Jackie McKinney, Mayor

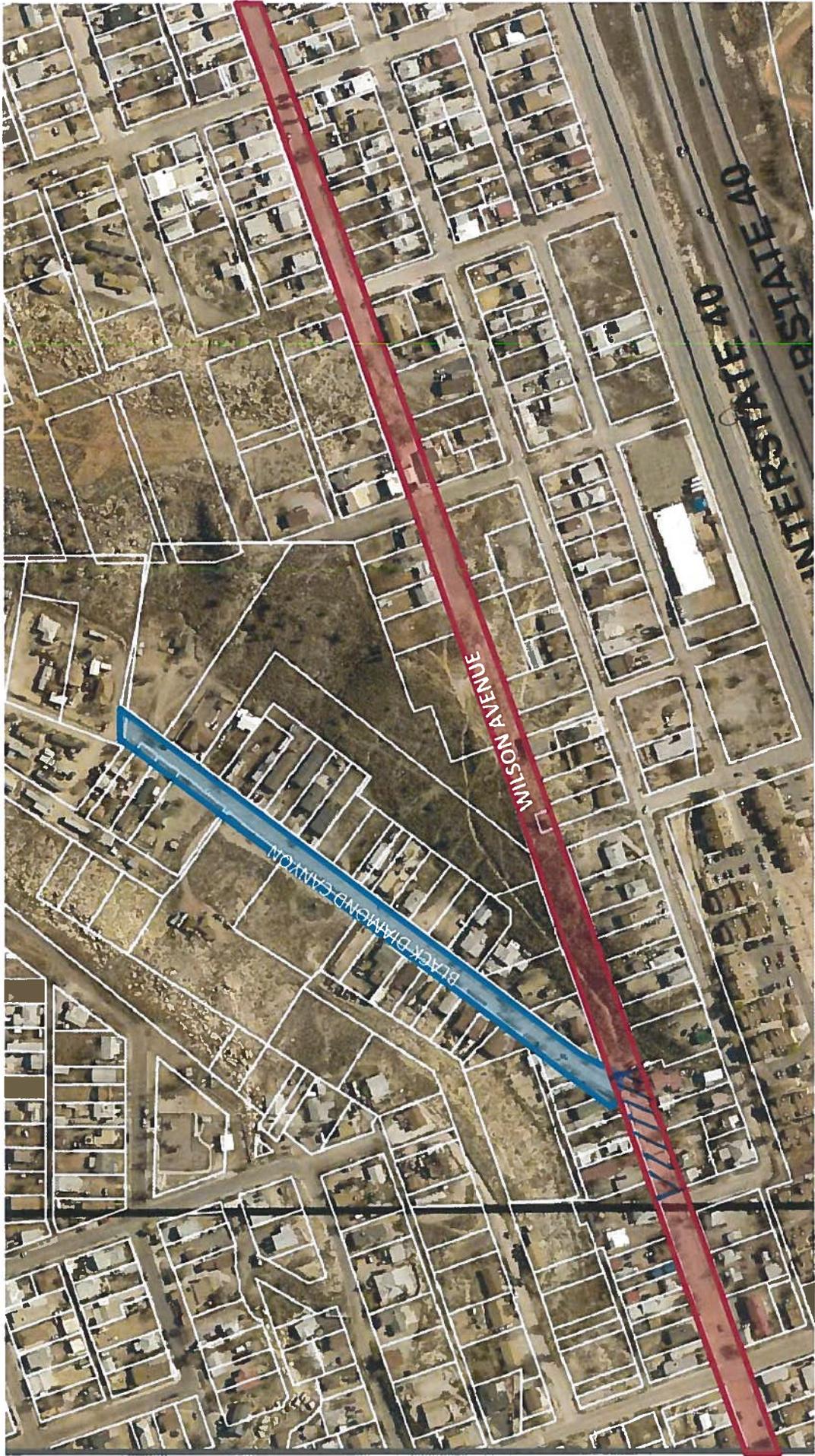
Attest: _____
Alfred Abeita, City Clerk

State of New Mexico)
)
County of McKinley) ss

The foregoing instrument was acknowledged before me this ____ day of December, 2016, by Jackie McKinney, Mayor, for and on behalf of **CITY OF GALLUP**, a municipal corporation.

Notary Public

My commission expires:



Discussion/Action Topic 6

Authorization to Dispose of City Owned Property by Ordinance

George Kozeliski, City Attorney



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM
MEETING DATE: December 13, 2016

SUBJECT: Authorization to dispose of City owned property by ordinance
DEPT. OF ORIGIN: City Attorney's Office
DATE SUBMITTED: December 7, 2016
SUBMITTED BY: George W. Kozeliski, City Attorney

Summary: The City of Gallup has been the owner of property on Dee Ann Street since 2005. The property was to be used by Battered Families Services, but was never occupied, and has been unoccupied for over ten (10) years. The City was given clearance by the State of New Mexico earlier this year to do with the property what it wants, as the State no longer had an interest in it. It was considered for an animal shelter, but the cost of fixing it up and preparing it for animal control was too expensive.

The City obtained an appraisal of the property by Hix Appraisal Services and the property was valued at \$270,000. The City advertised the property for sale and received three bids, all of the bids under the appraised value. The highest bid was by Butler Brothers in the amount of \$155,075.00.

Financial Impact: Plus \$155,075.00

Approved: Charlotte Bevent
Finance Department

Attachments: Bids and tally sheet

Legal Review: Recommends sale of the property to put it back on the tax rolls of the County.

Approved As To Form: [Signature]
City Attorney

Recommendation: Authorize City Clerk and City Attorney to proceed with disposal of the property by Ordinance in accordance with state law.

Approved for Submittal By:

[Signature]
Department Director
[Signature]
City Manager

CITY CLERK'S USE ONLY
COUNCIL ACTION TAKEN

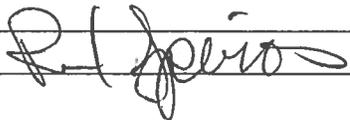
Resolution No. _____ Continued To: _____
Ordinance No. _____ Referred To: _____
Approved: _____ Denied: _____
Other: _____ File: _____

REJECTION OF BID: The City of Gallup reserves the right, for any reason whatsoever, to refuse or reject any or all bids, to withdraw this item from the sale without prior notice, to cancel any or all sales at any time without notice. All sales are subject to approval by City Council.

ALL WRITINGS CONTAINED HEREIN: This Sealed Bid contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

BID PROPOSAL RESPONSE PAGE

Bidder may bid only once. The City of Gallup reserves the right to reject any or all bids. Payment of Sales Tax and all other fees, if any, is the responsibility of the purchaser. Please complete this form and return with you sealed bid.

Printed Name:	Paul Spiros	
Company:		
Phone:	505-870-4423	
Fax:	-	
Email:	hotwheel2rus@yahoo.com	
Signature:		Date: 12-1-16

I wish to place the following bid: \$ 51,987⁶⁵

Butler Brothers, LLC

1900 East Historic Highway 66
Gallup, New Mexico 87301
Phone (505) 722-6661
Fax (505) 863-4981
800-748-1603

December 5, 2016

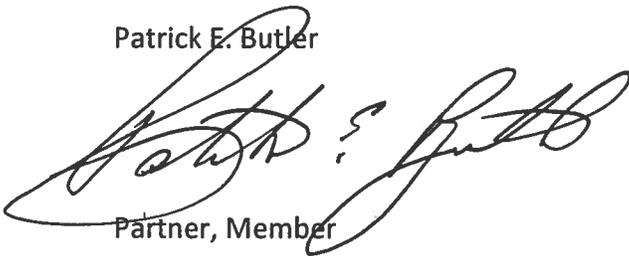
Reference Formal Bid No. 1627

Real Estate for Sale

127 DeeAnn Street

This is a formal offer for above mentioned property for \$155,075.00.

Patrick E. Butler

A handwritten signature in black ink, appearing to read 'Patrick E. Butler', written over a horizontal line.

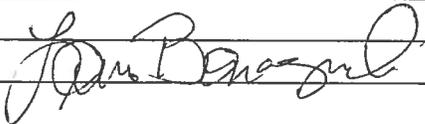
Partner, Member

REJECTION OF BID: The City of Gallup reserves the right, for any reason whatsoever, to refuse or reject any or all bids, to withdraw this item from the sale without prior notice, to cancel any or all sales at any time without notice. All sales are subject to approval by City Council.

ALL WRITINGS CONTAINED HEREIN: This Sealed Bid contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto.

BID PROPOSAL RESPONSE PAGE

Bidder may bid only once. The City of Gallup reserves the right to reject any or all bids. Payment of Sales Tax and all other fees, if any, is the responsibility of the purchaser. Please complete this form and return with you sealed bid.

Printed Name:	LOUIS BONAGUIDI	
Company:	CITY ELECTRIC SHOE SHOP	
Phone:	505/863-4898 hm work 505/863-5252	
Fax:	505/726-0493	
Email:	LOUBONA@YAHOO.COM	
Signature:		Date: 12/6/2016

I wish to place the following bid: \$ 46,500.⁰⁰

Discussion/Action Topic 7

**Vacation of Trail Easement Located in Lot 36,
Block B of First Unit Burke-George Heights Addition**

George Kozeliski, City Attorney



CITY OF GALLUP

COUNCIL STAFF SUMMARY FORM
MEETING DATE: December 13, 2016

SUBJECT: Vacation of Trail Easement
DEPT. OF ORIGIN: City Attorney's Office
DATE SUBMITTED: December 7, 2016
SUBMITTED BY: George W. Kozeliski, City Attorney

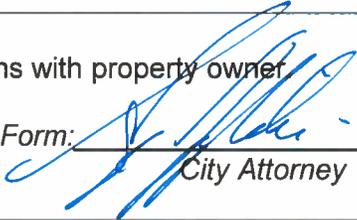
Summary: The City of Gallup was granted an easement by Tim and Betty Smith over property near Apache Circle. The residents of the area have had issues with transients using the trail and making small camp sites in the cliffs. YCC tried to make it less habitable over the past several years, but that has not worked. After meeting with the new owner of the property, it was clear that neither he, nor his neighbors desire to have the trail open any longer, and he withdrew his consent for the continued use of the trail.

Financial Impact: None

Approved: 
Finance Department

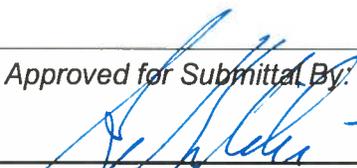
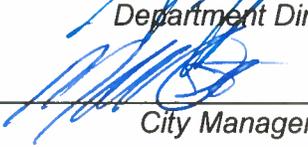
Attachments: Letter from James F. Smith and Vacation of Trail Easement document

Legal Review: Prepared vacation of easement after discussions with property owner

Approved As To Form: 
City Attorney

Recommendation: Approval of vacation of easement.

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: _____

December 6, 2016

George Kozeliski, City of Gallup Attorney

In regards to the YCC hiking trail west of the 1200 S. Puerco residence.

Legal description: Lots 35, 36, 37 & 38 Block B. Burke-George Heights Addn.

I have recently inherited the 1200 S. Puerco property and would like to close or withdraw the right of way or access granted by my parents for the YCC hiking trail. The trail is not being used for the purpose intended of safe routes to school and is now a party spot for transients. Not only are these folks basically partying on the trail but also trashing the area and becoming a nuisance and safety concern for the longtime residents in this neighborhood. As owner of said property I intend to block off the top part of the trail and work to make it impassable at my property line on the west side.

Sincerely,

James F. Smith

505-870-0727

Jfsmith60@hotmail.com

VACATION OF TRAIL EASEMENT

KNOW ALL MEN BY THESE PRESENCE, that the City of Gallup, New Mexico at the request of James F. Smith, successor in interest to Lot 36 in Block Lettered B of First Unit Burke-George Heights addition to the City of Gallup, New Mexico as the same is shown and designate on the Map of said addition filed in the office of the County Clerk of McKinley County, New Mexico on July 6, 1950, and previously owned by the Timothy H. Smith and Elizabeth A. Smith Revocable Trust Dated April 17, 1990, does hereby vacate and abandon that certain trail easement granted to the City of Gallup over above said Lot 36 and recorded in the records of the Clerk of McKinley County on March 14, 2007 as Docket # 330515 because permission to use said easement has been withdrawn and the same cannot be relocated in accordance with paragraph 3 of said trail easement

WITNESS its hand and seal this _____day of December, 2016.

CITY OF GALLUP

By _____
Jackie McKinney, Mayor

ATTEST:

Alfred Abeita, City Clerk

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

The foregoing instrument was acknowledged before me this ____ day of December, 2016, by Jackie McKinney, Mayor of the City of Gallup, a municipal corporation of the State of New Mexico, for and on behalf of said Municipal Corporation.

Notary Public

My commission expires:

Discussion/Action Topic 8

**Budget Transfer from General Fund Reserves
for Land Development Standards Update**

Clyde (C.B.) Strain, Planning and Development Director



CITY OF GALLUP

COUNCIL STAFF SUMMARY FORM

MEETING DATE:

SUBJECT: Budget Transfer from General Fund Reserves to Professional Services Account
DEPT. OF ORIGIN: Planning and Development Department
DATE SUBMITTED: December 8, 2016
SUBMITTED BY: Clyde (C.B.) Strain, Planning and Development Director

Summary:

The Planning and Development Department is respectfully requesting a budget transfer in the amount of \$150,000.00 from the General Fund Reserve account to the Planning and Development Department's Professional Services account to fund a complete update/rewrite of the City of Gallup Land Development Standards.

The City of Gallup Land Development Standards (LDS) is the development code that regulates development and land use throughout the City. This development code is very outdated and in dire need of update. The last update to the LDS was done in 1999. This update will be required to go through the RFP process in order to secure an experienced and qualified firm to perform the update.

Fiscal Impact:

The estimated cost for an update to the City of Gallup Land Development Standards is \$150,000.00. These funds will be transferred from the City's General Fund Reserves to the Planning and Development Department's Professional Services account.

Reviewed By: Charlotte Beeson
Finance Department

Attachments:

None

Legal Review:

Approved as to form: [Signature]
City Attorney

Recommendation:

Staff recommends approval of a budget transfer in the amount of \$150,000.00 from the City of Gallup General Fund Reserves to the Planning and Development Department's Professional Services account to fund a complete update/rewrite of the City of Gallup Land Development Standards.

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 No.:	_____

Discussion/Action Topic 9

Resolution No. R2016-45;
Election Resolution for the March 14, 2017 Regular Municipal Election

Alfred Abeita, City Clerk



**CITY OF
GALLUP**

COUNCIL STAFF SUMMARY FORM

MEETING DATE: December 13, 2016

SUBJECT: Resolution No. R2016-45; Regular Municipal Election Resolution
DEPT. OF ORIGIN: City Clerk
DATE SUBMITTED: December 6, 2016
SUBMITTED BY: Alfred Abeita II, City Clerk

Summary: As provided by Article VI, Section 1 of the City Charter, the next Regular Municipal Election will be held on Tuesday, March 14, 2017. At the election, persons shall be elected to fill the following elective offices: one District 1 Councilor and one District 3 Councilor. Both offices will be for a four-year term. In accordance with state law, the Resolution sets forth the polling locations, the dates for Absentee and Early Voting, the deadline to register to vote for the election and the date when candidates must file their Declarations of Candidacy for the election.

Since the election involves only two Council Districts, staff is recommending the use of four of the City's six Voting Convenience Centers for this election. By not using the Eastside and Westside Fire Stations as polling locations, it will save about \$4,260.00.

Fiscal Impact: The costs for conducting the election are estimated to be about \$28,166.00. There are sufficient funds available in the City Clerk's Office budget under line item 101-1020-414.47-15.

Reviewed By: *Charlette Beards*
Finance Department

Attachments: Resolution No. R2016-45.

Legal Review:

Approved As To Form: *Alfred Abeita II*
City Attorney

Recommendation: Staff recommends approval of Resolution No. R2016-45.

Approved for Submittal By:

Alfred Abeita II
Department Director
[Signature]
City Manager

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

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

RESOLUTION NO. R2016-45

ELECTION RESOLUTION OF THE CITY OF GALLUP, NEW MEXICO

BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF GALLUP, NEW MEXICO, THAT:

- A. A regular municipal election for the election of municipal officers shall be held on March 14, 2017. Polls will open at 7:00 A.M. and close at 7:00 P.M.
- B. At the regular municipal election, persons shall be elected to fill the following elective offices:
 - 1. District #1: One Councilor for a four year term.
 - 2. District #3: One Councilor for a four year term.
- C. Precincts 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 55, 56 and 59 are consolidated for the regular municipal election.
- D. The following locations are designated as Voting Convenience Centers (polling places) for the conduct of the regular municipal election:
 - 1. Southside Fire Station #1, 1800 South Second Street.
 - 2. Northside Fire Station #2, 911 West Lincoln Avenue.
 - 3. Harold Runnels Athletic Complex, 820 East Wilson Avenue.
 - 4. McKinley County Courthouse Rotunda, 207 West Hill Avenue.

Registered voters from District 1 and District 3 shall be allowed to vote at one of the four designated Voting Convenience Centers on Election Day. Voters will not be assigned to a specific polling place on Election Day.

- E. Absentee Voting. Applications for absentee ballots may be obtained only from the office of the Municipal Clerk. All applications for an absentee ballot must be completed and accepted by the Municipal Clerk prior to 5:00 p.m., March 10, 2017. After 5:00 p.m. on March 10, 2017, all unused absentee ballots will be publicly destroyed by the Municipal Clerk. The Municipal Clerk will accept completed absentee ballots delivered by mail, in person by the voter casting the absentee ballot, by a member of the voter's immediate family, or by the caregiver to the voter until 7:00 p.m. on March 14, 2017.

Absentee ballots may be marked in person in the office of the Municipal Clerk during the regular hours and days of business, beginning on Tuesday, February 7, 2017, and closing at 5:00 p.m. on Friday, March 10, 2017.

Early Voting. Early voting on paper ballots counted by an electronic vote tabulator will be conducted in the office of the Municipal Clerk during the regular hours and days of business, beginning on Wednesday, February 22, 2017 and closing at 5:00 p.m. on Friday, March 10, 2017.

- F. Persons desiring to register to vote at the regular municipal election must register with the McKinley County Clerk not later than Tuesday, February 14, 2017 at 5:00 P.M., the date on which the County Clerk will close registration books.
- G. All Declarations of Candidacy shall be filed with the Municipal Clerk on Tuesday, January 17, 2017 between the hours of 8:00 A.M. and 5:00 P.M.
- H. The casting of votes by qualified municipal electors shall be recorded on paper ballots to be counted by electronic vote tabulators.

PASSED, ADOPTED AND APPROVED this 13th day of December, 2016.

CITY OF GALLUP, NEW MEXICO

By: _____
Jackie McKinney, Mayor

ATTEST:

Alfred Abeita II, City Clerk

Discussion/Action Topic 10

Approval to Cancel the December 27, 2016 Regular City Council Meeting

Maryann Ustick, City Manager

(No backup documentation)

Presentation and Information Item 1

Presentation on the City's New Interactive Voice Response (IVR) System

Jon DeYoung, Assistant City Manager

(Information will be provided at the meeting)