

## AGENDA

### GALLUP CITY COUNCIL REGULAR MEETING TUESDAY, JULY 28, 2020; 6:00 P.M.



Louie Bonaguidi, Mayor

Linda Garcia, Councilor, Dist. 1    Michael Schaaf, Councilor, Dist. 2  
Yogash Kumar, Councilor, Dist. 3    Fran Palochak, Councilor, Dist. 4

Maryann Ustick, City Manager  
Curtis Hayes, City Attorney

**PUBLIC NOTICE:** In accordance with the public health order issued by the New Mexico Department of Health, the meeting will be physically closed to the public; however, it will be accessible to the public via the following technology service:

Facebook Live stream through the City of Gallup's Facebook Page:  
<https://www.facebook.com/CityOfGallup/>

**Members of the public may submit comments on non-agenda items toward the end of the meeting. Please call 863-1254 to leave your name and a return phone number.**

**A. Pledge Of Allegiance**

The members of the body and the public are invited to recite the Pledge of Allegiance.

**B. Roll Call**

**C. Approval Of Minutes**

Regular Meeting of July 14, 2020

Documents:

[DRAFT MINUTES JULY 14 2020 REG MTG.PDF](#)

**D. Discussion/Action Topics**

**1. Ordinance No. S2020-7; Authorizing The Execution And Delivery Of A Loan Agreement And Intercept Agreement By And Between The City Of Gallup And NMFA To Refinance GO Bonds**

We are requesting approval of Ordinance 2020-7 AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF GALLUP, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF UP TO \$7,500,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING THE COST OF REFUNDING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT'S OUTSTANDING GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2010A; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF THE REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978 (THE "STATE-SHARED GROSS RECEIPTS TAX"); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO MAKE CERTAIN DETERMINATIONS CONCERNING THE TERMS OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

This refunding will reduce our current year financial obligation significantly and reducing the payments for the remaining life of the bond to allow the City general fund some flexibility to help manage the impact of the covid crisis.

A budget adjustment to pay for issuance costs of \$90,000 will be necessary. The reduction in bond payments has already been implemented in the FY 2021 budget.

Fiscal Impact: Bond obligation will reduce by and estimated amount of \$793,015.07 before issuance costs of roughly \$90,000.00.  
Recommendation: Approval of Ordinance No. S2020-7 and budget adjustment for issuance costs  
Speaker's Name: Patty Holland

Documents:

[DRAFT LOAN AGREEMENT \(W3796550X7A92D\).PDF](#)  
[LOAN ORDINANCE \(SSGR REFUNDING\) \(W3785892X7A92D\).PDF](#)  
[DRAFT INTERCEPT AGREEMENT \(W3796554X7A92D\).PDF](#)

**2. Resolution No. R2020-24; 4th Quarter FY 2020 Budget Adjustments And Report Of Actuals**

Each quarter, the Finance department reviews any changes to the budget and submits these changes to council for approval. The following areas are reviewed: personnel, operations, capital outlay and transfers in and out of each fund. The Department of Finance and Administration (DFA) requires Council to pass a resolution for all budget increases, decreases, and transfers between funds. DFA further requires approval of the report of actuals showing cumulative activity for the fiscal year. The report to DFA regarding budget revisions is due July 31, 2020.

This revision encompasses all budget changes processed April 1, 2020 thru June 30, 2020 (Quarter 4 of FY 2020).

Fiscal Impact: None  
Recommendation: Staff recommends approval of the budget adjustments and report of actuals.  
Speaker's Name: Patty Holland

Documents:

[BUDGET RESOLUTION FY 20 Q4.PDF](#)  
[REPORT RECAP - FISCAL YEAR 2019-2020 - GALLUP ROA Q4.PDF](#)  
[4TH QTR BA RECAP.PDF](#)  
[ADJUSTMENT RECAP FOR FISCAL YEAR 2019-2020 - GALLUP Q4.PDF](#)

**3. AVA LLC, ABA Land Ltd. Co. And Love's Travel Shops & Country Stores Inc., Final Subdivision Plat Approval**

Case No. 2020-00300005, request for final plat review and approval of the AVA, LLC, ABA Land Ltd. Co. and Love's Travel Stops & Country Stores, Inc., minor subdivision.

See attached briefing memo.

Fiscal Impact: None  
Recommendation: Recommend approval of the AVA LLC, ABA Land Ltd. Love's Travel Stops & Country Stores Final Plat  
Speaker's Name: C.B. Strain

Documents:

[2020\\_07\\_20\\_11\\_08\\_46.PDF](#)  
[AVA ABS LOVES MNSB GTF COMMENTS.PDF](#)  
[AVA, ABA, LOVES FINAL PLAT REC 07.01.2020.PDF](#)

**4. NGWSP Reach 27.11 Easement Agreement With Rico Land & Cattle Co.**

The City in the process of obtaining easements for Reach 27.11 of the Navajo Gallup Water Supply Project. This reach will extent south from Gallup to supply water to the Navajo Tribal Utility Authority so that it can provide water to chapters south of Gallup. A sketch map showing the location of Reach 27.11 and the location of this particular easement is attached. This item is being presented to City Council for approval as Gallup City Code Section 8-1-7 requires Council approval for any agreement to provide water to any location outside of the city limits. Paragraphs 2 and 3 of this agreement allow the Rico Land and Cattle Co. to purchase water in the future at "in-city" rates. Also attached to this agenda item is the Grant of Easement by the Rico Land and Cattle Co. which requires acceptance by the City.

Fiscal Impact: None  
Recommendation: Approval of the agreement and acceptance of the easement  
Speaker's Name: Curtis Hayes

Documents:

[RICO LAND EASEMENT AGREEMENT 1.PDF](#)  
[RICO - GRANT OF EASEMENT 1.PDF](#)  
[RICO LAND AND CATTLE EASEMENT-1.PDF](#)

**5. Resolution No. R2020-25; Request For Water Service Outside Of City Limits**

Per a request from Kachina Rentals, LLC (Attachment 1), two locations for water service outside City Limits are shown in

Attachment 2.

City of Gallup Code, specifically 8-1-7 B (3), states " *Nothing in this chapter shall prohibit or prevent the city council from authorizing by written resolution or contract, the furnishing of water service to any user outside the corporate limits that may be individuals or private legal entities upon conditions set by the city council in its sole discretion.*" (Ord. 2016-6, 5-24-2016)

With respect to water usage, Kachina Rentals, LLC could use up to 7,500 gallons of water per month at 20 W. NM Highway 118 and up to 100,000 gallons per month at 34 W. NM Highway 118 . With respect to fiscal impacts, it will mean additional revenue between \$650-2,000 per month for for the water enterprise fund.

There will be no additional costs to the City to produce and supply water to Kachina Rentals, LLC. The only additional cost incurred by the City is the installation of the meter and meter can; however, this cost will be borne by the customer (\$1,385 - \$3,870)

Resolution No. R2020-25 is attached, with conditions for temporary service.

Fiscal Impact: Increased revenue for both Water and Wastewater Enterprise Funds by the addition of two new commercial customers.  
 Recommendation: Staff recommends approval of Resolution No. R2020-XX.  
 Speaker's Name Dennis Romero

Documents:

- [ATTACHMENT 1 - KACHINA RENTALS LLC LETTER REQUESTING WATER SERVICE \(1\).PDF](#)
- [ATTACHMENT 2 - KACHINA LLC WATER LOCATIONS MAP \(1\).PDF](#)
- [R2020-25 CITY OF GALLUP WATER SERVICE TO KACHINA RENTALS LLC.PDF](#)
- [R2020-25 CITY OF GALLUP WATER SERVICE CONDITIONS KACHINA RENTALS LLC.PDF](#)

**6. Request To Approve Amendment No. 4 To The Wastewater Treatment Facility Design, Build And Operate Contract With CH2M Hill (Jacobs)**

The Design, Build and Operate (DBO) contact between the City of Gallup (City) and CH2M Hill for operation and maintenance of the Wastewater Treatment Plant (WWTP) was set up to be renewed on a calendar year basis and has provisions in it for annual adjustments due to the consumer price index (CPI) and pass through costs (insurance, performance bond and the repair and replacement fund.

Contract Amendment No. 4 covers the following two items:

1. The City requested that the contract terms be amended to the City's fiscal year (July 1 - June 30), vice the calendar year (January 1 - December 31) and CH2M/Jacobs agreed to this.
2. In addition, the annual pass through costs were amended, as seen in the table below:

ITEM	FY 20 ANNUAL COST	FY 21 ANNUAL COST	CHANGE
1. Performance Bond Cost Amount per million (Bond size will be equal to the annual Service Fee, including pass-through costs.)	\$ 5,472	\$ 7,876	\$ 2,404
2. Insurance	\$ 11,822	\$ 11,871	\$ 49
3. Repair & Replacement (R&R) Capital Fund	\$ 70,000	\$ 70,000	

4.

The adjustment(s) to the annual service fee do not require documentation in the form of a contract amendment. Please note that due to the completion of the WWTP Capital Project upgrades, there is a net reduction of \$107,552 in the annual service fee, per the terms of the DBO contract. Annual service fee will be set at \$1,443,833 vice \$1,541,435 due to this provision of the original contract.

Fiscal Impact: No fiscal impact noted, as slight increase in fees was included in Wastewater budget. Decrease of \$107,552 in the annual service fee.  
 Recommendation: Staff recommends approval of Contract Amendment No. 4.  
 Speaker's Name Dennis Romero

Documents:

- [GALLUP\\_AMND 4\\_11216\\_OMM\\_FINAL.PDF](#)

**7. Request For Budget Adjustment For Change Order No. 1 - Highway 491 16-Inch Waterline Replacement Project**

In February 2020, Council approved the award of the Highway 491 16-inch Waterline Replacement project to Adame

Construction in the amount of \$2,022,058.98 (202-1525-474.48-99, Project JU1846).

On July 8th, the boring subcontractor encountered extremely hard rock in the project alignment, while attempting to bore under Highway 491, which is considered an unforeseen field condition, and is seeing additional compensation for time and equipment. The subcontractor has experienced a lack of progress due to this hard rock. The subcontractor notified the Engineer of Record that continuing with the current equipment could result in equipment damage which is a cost the subcontractor is unwilling to accept. In addition, the subcontractor has raised the issue of safety for the subcontractor's employees working around this equipment and in the bore pit.

The attached cost proposal is for approximately 120 hrs of extended overhead and mobilization of other equipment. The proposed subcontractor cost is \$92,160.45. This does not include the prime contractor's profit and overhead, or tax which could potentially increase the total cost by approximately \$22,634. This would have a final cost for this change order of \$114,794. A review of the contract balance sheet shows approximately \$16,542 of unearnable funds that can be used to cover a portion of the costs associated with this change order. This leaves an approximately \$98,300 deficit in the project budget to complete the work associated with the proposed change order.

Staff requests a budget adjustment of \$108,000 from the Water Enterprise Fund (Fund 506) cash reserve to proceed with this proposed change order.

A budget adjustment of \$108,000 would cover costs associated with the change order and leave a balance of \$9,700 for any other minor project issues that may arise. Change Order No. 1, in the unfunded amount of \$98,300 represents an increase of 4.86% in the contract amount of \$2,022,059.

**Recommendation:**

Staff recommends approval of budget adjustment of \$108,000 from the Water Enterprise Fund (Fund 506) cash reserve to proceed with proposed Change Order No. 1.

Fiscal Impact: Budget adjustment and expenditure of \$108,000 from the Water Enterprise Fund (Fund 506) cash reserve.  
Recommendation: Please see above.  
Speaker's Name: Dennis Romero

Documents:

[ATTACHMENT 1 - CHANGE ORDER NO 1 COST PROPOSAL HIGHWAY 491 WATERLINE PROJECT.PDF](#)

#### 8. Budget Adjustment For FY 21 Fire Protection Fund Distribution Award

The Gallup Fire Department is requesting a budget adjustment of FY 21 Fire Protection Distribution for a total of \$616,698.00.

Specific Break-Down:

- FY'21 Fire Fund budget was originally budgeted with the State Fire Marshal's projected minimum distribution of \$408,043.
- Budget increase of \$208,655 in revenue and expenditure
- Payment to New Mexico Finance Authority (NMFA) for the amount of \$142,352.00.
- Total distribution to the fire department 209 Fire Fund is \$474,089.00 for continued operations. This amount includes: NMFA payment and a budget increase.

Fiscal Impact: Fund 209 revenue increase of \$208,655 and expenditure increase will be \$474,089.00  
Recommendation: Staff Recommends Budget Adjustment Approval of 209 Fund  
Speaker's Name: Jesus "Chuy" Morales, Fire Chief

Documents:

[FY 21 GALLUP 1ST DISTRIBUTION LETTER.PDF](#)

#### 9. Walmart Community Grant Award

The Gallup Fire Department is pleased to announce that we have been selected to receive a Walmart Community Grant in the amount of \$2500.00 for the purchase two Automated External Defibrillators (AED's).

If approved, the fire department will coordinate with Finance to budget award in approved account as revenue and expenditure.

Fiscal Impact: Approved Fund; Budget increase of \$2500.00  
Recommendation: Staff recommends approval  
Speaker's Name: Jesus "Chuy" Morales, Fire Chief

Documents:

[2020\\_07\\_06\\_13\\_28\\_16.PDF](#)

**E. Comments By Public On Non-Agenda Items**

The public is invited to comment on matters not appearing on the published meeting agenda.

**F. Comments By Mayor And City Councilors**

**G. Comments By City Manager And City Attorney**

**H. Motion To Adjourn**

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

Minutes of the Regular Meeting of the Gallup City Council, City of Gallup, New Mexico held at Gallup City Hall, 110 W. Aztec Avenue, at 6:00 p.m. on Tuesday, July 14, 2020.

The meeting was called to order by Mayor Louie Bonaguidi. He provided instructions to the public viewing the meeting through Facebook Live on how to submit comment on non-agenda items later in the meeting.

Upon roll call, the following were present:

Mayor: Louie Bonaguidi

Councilors: Linda Garcia  
Michael Schaaf  
Yogash Kumar  
Fran Palochak

Also present: Maryann Ustick, City Manager  
Curtis Hayes, City Attorney

Mr. Hayes certified for the record that the only matter discussed during the closed session was threatened or pending litigation regarding the Navajo Gallup Water Supply Project Reach 27.9, Kachina Road and County Road 60.

Presented to the Mayor and Councilors for their approval were the Minutes of the Regular Meeting of June 18, 2020 and the Special Meeting of June 23, 2020.

Councilor Schaaf made the motion to approve the minutes of the Regular Meeting of June 18, 2020. Seconded by Councilor Palochak. Roll call: Councilors Schaaf, Palochak, Kumar, Garcia and Mayor Bonaguidi all voted yes.

Councilor Palochak made the motion to approve the minutes of the Special Meeting of June 23, 2020. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Kumar, Schaaf and Mayor Bonaguidi all voted yes.

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

1. Resolution R2020-21; Authorizing and Approving Submission of a Completed Application for Financial Assistance and Project Approval to the New Mexico Finance Authority – Patty Holland, Chief Financial Officer

Ms. Holland presented the proposed Resolution which is a refinance structure of Gross Receipts Tax Revenue Bonds, with the help of Eric Harrigan of RBC Capital Markets, LLC and Daniel Alsup of Modrall Sperling Law Firm, for the purpose of controlling cash flow in response to the COVID crisis. Ms. Holland said the interest rate will drop from 4.2% to about 1.8% with a valued savings of \$771,341 this year. Ms. Holland will bring a

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proposed ordinance for City Council approval at the next regularly scheduled meeting and hopes to have the final cost with a budget adjustment to cover costs associated with application submission.

Councilor Palochak made the motion to approve Resolution R2020-21; authorizing and approving submission of a completed application for financial assistance and project approval to the New Mexico Finance Authority. Seconded by Councilor Schaaf. Roll call: Councilors Palochak, Schaaf, Garcia, Kumar and Mayor Bonaguidi voted yes.

2. Application for Private Security Guard Business License by Desert Wolf Security Inc. – Franklin Boyd, Chief of Police

Chief Boyd said Desert Wolf Security Inc. has submitted the proper application and supporting documentation for the business license. In accordance with Section 3-11-4 of the City Code, Chief Boyd certified his determination that the public convenience and necessity would be served by the issuance of the license. Chief Boyd introduced Mr. Hall, owner of Desert Wolf Security Inc.

There being no further questions, Councilor Schaaf made the motion to approve the application for a Private Security Guard Business License by Desert Wolf Security Inc. Seconded by Councilor Garcia. Roll call: Councilors Schaaf, Garcia, Kumar, Palochak and Mayor Bonaguidi all voted yes.

3. Gallup MainStreet Arts & Cultural District Memorandum of Understanding (MOU) and Professional Services Agreement – Maryann Ustick, City Manager

Ms. Ustick presented the biennial MOU between the State of New Mexico, Gallup MainStreet and the City of Gallup, which is required to maintain a legally compliant MainStreet and provided benefits to the downtown businesses. In addition to the MOU, Ms. Ustick also recommended approval of the annual Professional Services Agreement with Gallup MainStreet in the amount of \$40,000 for Fiscal Year 2021, which was included in the budget. Ms. Ustick also clarified the MOU dates of June 30, 2020 through July 1, 2022 and introduced Kara Smith, Gallup MainStreet Director.

Ms. Smith thanked the Mayor and Councilors for their support and partnership in past achievements including \$800,000 grant toward the Coal Avenue Commons Construction Project, the National Grants for historic façade improvements and small businesses and a free concert series planned for next summer.

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Councilor Garcia made the motion to approve the Gallup MainStreet Arts & Cultural District MOU from June 30, 2020-July 1, 2022 and FY 2021 Professional Services Agreement. Seconded by Councilor Palochak. Roll call: Councilors Garcia, Palochak, Kumar, Schaaf and Mayor Bonaguidi all voted yes.

#### 4. Gallup MainStreet Arts & Cultural District Agreement for Construction Mitigation for Coal Avenue Commons – Maryann Ustick, City Manager

Ms. Ustick said Stan Henderson, former Public Works Director, previously allocated \$50,000 for construction mitigation of the project and announced Clyde (C.B.) Strain as the new project manager. Ms. Ustick highlighted the contracts scope of services including general communication to impacted businesses, promotion and marketing of downtown and training assistance to help ensure continuity of operations during project construction. She recommended approval of the Professional Services Agreement in the amount of \$54,145.25 including New Mexico Gross Receipts Tax (NMGRT) with no financial impact to the City.

Ms. Smith provided information regarding the number of Gallup MainStreet staff and collaborating with Jennifer Lazarz, Tourism and Marketing Manager to provide downtown business owners and the community with consistent information.

Councilors Palochak and Garcia expressed their support of Ms. Smith.

Councilor Palochak made the motion to approve the Gallup MainStreet Arts & Cultural District Agreement for construction mitigation for Coal Avenue Commons. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Schaaf, Kumar and Mayor Bonaguidi all voted yes.

#### 5. Approval of Annual Chamber of Commerce Contract for Tourism Related Services – Jennifer Lazarz, Tourism and Marketing Manager

Ms. Lazarz presented the annual contract for FY 2021 in the amount of \$85,000., including \$50,000 for the operation and staffing of the Visitors Center and \$35,000 for general destination marketing services. Ms. Lazarz said a 55% cut to lodger's tax budget reduced the amounts from last year for the provided services.

Bill Lee, Gallup Chamber of Commerce CEO, thanked the Mayor, Councilors and City staff for their continued support and the efforts made to work with businesses, especially restaurants.

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Councilor Garcia made the motion to approve the annual Chamber of Commerce Contract for tourism related services in the amounts of \$50,000 for the Visitor's Center and \$35,000 for destination marketing services. Seconded by Councilor Palochak. Roll call: Councilors Garcia, Palochak, Schaaf, Kumar and Mayor Bonaguidi all voted yes.

### 6. Ratification of Collective Bargaining Agreement with United Mine Workers of America (UMWA) Local 2005 – Klo Abeita, Human Resources Director

Ms. Abeita presented the agreement, which will take effect July 2020 and expire July 2023. She also explained an economic wage re-opener in March 2021 that would require City Council approval and highlighted economic provisions including clothing allowances, safety incentives, tool allowances, longevity pay and health and dental insurance premium cost sharing which were included in the FY 2021 budget and approved by City Council. Ms. Abeita also noted the total number of union members and three position title changes.

Councilor Kumar made the motion to approve the ratification of Collective Bargaining Agreement with UMWA Local 2005. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Schaaf, Garcia and Mayor Bonaguidi all voted yes.

### 7. Approval of Agreement with NCI for Detox Administration and Operation and Budget Adjustment – Debra Martinez, Behavioral Health Investment Zone (BHIZ) Manager

Ms. Ustick provided an update regarding the Liquor Excise Tax Agreement, the LET Committee meeting scheduled for next week, the Joint Resolution needed to allocate funding and the intention on bringing the LET Agreement back to the Council for approval before August 10, 2020. Ms. Ustick explained that in order to continue operations, a contract is required and therefore recommended approval of the contract and budget adjustment allowing temporary funding from the fund balance. Upon approval of the LET agreement, expenses will be transferred to LET.

Ms. Martinez said the agreement is for \$835,000 and funds basic services including wages for a Detox Manager, Assistant Detox Manager, supplies, maintenance and other general operations.

Councilor Palochak stressed the importance of Liquor Excise Tax, the intended purpose of funding as provided by New Mexico State Statue and the importance of City and County staff being informed of the law.

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Councilor Palochak made the motion to approve the agreement with NCI for Detox Administration and Operation and budget adjustment in the amount of \$835,000 from fund balance pending approval of Liquor Excise Tax allocation. Seconded by Councilor Kumar. Roll call: Councilors Palochak, Kumar, Garcia, Schaaf and Mayor Bonaguidi all voted yes.

### 8. Budget Adjustment to Provide for Negotiation of a New Power Supply Contract – John Wheeler, Electric Director

Mr. Wheeler presented the contract and budget adjustment in the amount \$100,000 to develop a RFP, proposal analysis, negotiate a Purchase Power Agreement (PPA) and to provide support throughout the process for presentation and implementation. The new PPA will support or replace the current contract with Continental Divide Electric Cooperative, Inc. (CDEC) which expires in 2025. The process will incorporate attaining the additional 5% of renewable energy allowed under the CDEC contract beginning in 2022. Mr. Wheeler also provided a time frame for the process.

Discussion followed regarding renewable energy and the possibility of negotiating more than 5% required in the current contract.

Councilor Palochak made the motion to approve the budget adjustment to provide for negotiation of a new Power Supply Contract in the amount of \$100,000. Seconded by Councilor Schaaf. Roll call: Councilors Palochak, Schaaf, Garcia, Kumar and Mayor Bonaguidi all voted yes.

### 9. Purchase of Vacuum Reclosers for the Solar Farm Sectionalizing – John Wheeler, Electric Director

Mr. Wheeler said the purpose of the reclosers are to protect downstream circuit loads from any faults emanating from within the Solar Farm. This was a formal bid process in which one bid was received from Western United of Albuquerque, in the amount of \$31,843.88 including NMGRT.

Councilor Kumar made the motion to approve purchase of vacuum reclosers for the Solar Farm sectionalizing. Seconded by Councilor Garcia. Roll call: Councilors Kumar, Garcia, Palochak, Schaaf and Mayor Bonaguidi all voted yes.

### 10. Contract Approval for a System Modeling and Inventory Program – John Wheeler, Electric Director

Mr. Wheeler emphasized the importance of the project because Electric Department staff will be working with Osmose, the pole testing company while the contract engineer, Transmission and Distribution Services, LLC (T & D) will include information

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gleaned from Osmose and provide site inspections to determine the need for additional capacitor banks, transformer loading, wire loading, voltage drops and sequencing of reclosers and fuses. Mr. Wheeler also stated the project will provide accurate inventory of electric infrastructure and requested a budget adjustment in the amount of \$550,000 for the project with T & D, LLC.

Councilor Palochak made the motion to approve the contract for a System Modeling and Inventory Program by awarding the project to T & D, LLC and approval of a budget adjustment in the amount of \$550,000. Seconded by Councilor Schaaf. Roll call: Councilors Palochak, Schaaf, Garcia, Kumar and Mayor Bonaguidi all voted yes.

### 11. Joint Use Management Program – John Wheeler, Electric Director

Ms. Ustick recommended the item be postponed to a later date for the purpose of obtaining an agreement, which is required by the City's financial policy.

### 12. Supervisory Control and Data Acquisition (SCADA) Improvements – John Wheeler, Electric Director

Mr. Wheeler explained issues obtaining accurate information with the current system, explained the use of cell phone technology which is less expensive and more reliable and intentions to switch everything to a sole source provider, Sweitzer Engineering Laboratories, who provide most of the SCADA metering transmission in the state. The cost of the change is \$285,000 which is provided under CIP project JU1510 as FY 2020 is closed and new funding is rolled over for FY 2021.

Councilor Kumar made the motion to approve the purchase of Supervisory Control and Data Acquisition Improvements included under CIP project JU1510. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Garcia, Schaaf and Mayor Bonaguidi all voted yes.

### 13. Resolution R2020-22; Application for US Bureau of Reclamation (USBR) WaterSMART Grant (Announcement BOR-DO-21-F001) – Dennis Romero, Water Director

Mr. Romero said the Federal Government and the USBR offers a number of grants almost every year, including the WaterSMART Grant program. After exploring other options near the San Juan River that would allow for more storage, the decision was made to delay the Navajo Gallup Water Supply Project completion date from December 2024 to November 2027. However, the City's water supply was not taken into account; therefore, well maintenance and drilling was stopped. Mr. Romero provided details on drilling additional wells which cost between \$2 million and \$3 million each and the

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request to the USBR for funding. At the request of USBR, the City will compile an application for the WaterSMART Grant Program in the total amount of \$2.25 million with a 50% match. If approved, Mr. Romero plans to request a portion of the matching funds from the State of New Mexico. Mr. Romero requested approval of the Resolution authorizing staff to apply for funding under the WaterSMART program.

Brief discussion followed regarding an unused well located in Indian Hills and the potential to use it in the future and the prospective site of one well near Yatahey, New Mexico.

Councilor Schaaf made the motion to approve Resolution R2020-22; Application for US Bureau of Reclamation WaterSMART Grant. Seconded by Councilor Palochak. Roll call: Councilors Schaaf, Palochak, Garcia, Kumar and Mayor Bonaguidi all voted yes.

### 14. Resolution No. R2020-23; High-Efficiency Water Conservation Incentive Rebates – Dennis Romero, Water Director

Mr. Romero provided a list of rebate programs offered to residents, how they are granted and explained the current rebate programs, which expire in July and should the Council choose to extend the program, a resolution is required.

Discussion followed regarding resident notification of the extension of programs and clarification regarding the HE Toilet and Showerhead Rebate.

Councilor Garcia made the motion to approve Resolution No. R2020-23; High Efficiency Water Conservation Incentive Rebates. Seconded by Councilor Schaaf. Roll call: Councilors Garcia, Schaaf, Kumar, Palochak and Mayor Bonaguidi all voted yes.

### 15. G-80 Water Rights Application; Request for Budget Adjustment – Dennis Romero, Water Director

Mr. Romero provided background information regarding the submission of the G-80 Water Rights Application in 1983 and where it stands today. As a result of the application's current standing, Stein and Brockmann, the City's contract attorneys, made a request to the Office of the State Engineer (OSE) to expedite approval of Permit Application No. G-80/SJ-1491. In response, OSE provided update requirements to the 1983 hydrologic report. In order to cover legal and technical costs and to complete the application process, the Water Department staff requested a budget adjustment of \$80,000, the creation of a G-80 project for tracking costs and the current \$105,547.90 balance be encumbered from Fund 202.

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Councilor Kumar made the motion to approve G-80 Water Rights Application and budget adjustment of up to \$80,000 from Fund 202 for the completion of G-80 water rights application process as presented. Seconded by Councilor Palochak. Roll call: Councilors Kumar, Palochak, Garcia, Schaaf and Mayor Bonaguidi all voted yes.

### 16. Resolution R2020-20; FY 2021 Clean & Beautiful Grant Award & Budget Adjustment of Revenue/Expenditures of \$30,300 – Elizabeth Barriga, Environmental Program Coordinator

Ms. Barriga announced the award of the FY 2021 New Mexico Tourism Department Grant to the City of Gallup in the amount of \$30,300 for the purpose of beautification. She thanked those who have provided support to the program.

Discussion followed regarding the 25% match covered by in-kind and recycling services, youth services who will participate in the program and when and where the program will start. Ms. Barriga also offered to help Councilors within their perspective districts.

Councilor Palochak made the motion to approve Resolution R2020-20; FY 2021 Clean & Beautiful Grant Award and budget adjustment of revenue and expenditures of \$30,300. Seconded by Councilor Garcia. Roll call: Councilors Palochak, Garcia, Schaaf, Kumar and Mayor Bonaguidi all voted yes.

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

None

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

Councilor Palochak encouraged the public to follow the current New Mexico Public Health Order, including wearing a mask and social distancing to help keep the pandemic under control and get back to normal. She also thanked City staff and the Chamber of Commerce for providing an outlet to allow restaurants the opportunity to expand their services outside.

Councilor Kumar echoed Councilor Palochak's comments.

Mayor Bonaguidi commended business owners for enforcing masks within their facilities.

### **Comments by City Manager and City Attorney**

Ms. Ustick announced the start of the Coal Avenue Commons Construction Project on Monday and invited Clyde (C.B.) Strain, Community Planner to provide information regarding an alternative for restaurant owners to continue dine-in services outside.

MINUTES

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Mr. Strain said in an effort to help restaurant owners continue to operate they can complete an application to provide service outside their facility, in their parking lot. He also provided details regarding the approval process and said there is no cost for this application.

Councilor Palochak made the motion to adjourn. Seconded by Councilor Kumar. Roll call: Councilors Palochak, Kumar, Garcia, Schaaf and Mayor Bonaguidi all voted yes.

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Louie Bonaguidi, Mayor

ATTEST:

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Alicia Palacios, Deputy City Clerk

\$7,500,000

LOAN AGREEMENT

dated

September 4, 2020

by and between the

NEW MEXICO FINANCE AUTHORITY

and the

CITY OF GALLUP, NEW MEXICO

Certain interests of the New Mexico Finance Authority under this Loan Agreement may be assigned to BOKF, NA, as trustee under an Indenture, as defined in Article I of this Loan Agreement.

## LOAN AGREEMENT

THIS LOAN AGREEMENT dated September 4, 2020 is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”), and the CITY OF GALLUP, NEW MEXICO (the “Governmental Unit”), a political subdivision duly organized and existing under the laws of the State of New Mexico (the “State”).

### WITNESSETH:

WHEREAS, the Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized and created under and pursuant to the laws of the State, particularly Section 6-21-1 et seq., NMSA 1978, as amended (the “Finance Authority Act”); and

WHEREAS, one of the purposes of the Finance Authority Act is to implement a program to permit qualified entities, such as the Governmental Unit, to enter into agreements with the Finance Authority to facilitate financing of public projects; and

WHEREAS, the Governmental Unit is a political subdivision duly organized and existing under and pursuant to the laws of the State and is a qualified entity under the Finance Authority Act; and

WHEREAS, the Governing Body of the Governmental Unit has determined that it is in the best interests of the Governmental Unit and its residents that the Governmental Unit enter into this Loan Agreement with the Finance Authority and accept a loan from the Finance Authority to finance the costs of refunding the Governmental Unit’s Gross Receipts Tax Improvement Bonds, Series 2010A (the “Refunded Bonds”), as more fully described on the Term Sheet attached hereto as Exhibit “A”; and

WHEREAS, the Act authorizes the Governmental Unit to use the Pledged Revenues to finance the Project and to enter into this Loan Agreement; and

WHEREAS, the Finance Authority has determined that the Project is important to the overall capital needs of the residents of the State and that the Project will directly enhance the health and safety of the residents of the Governmental Unit; and

WHEREAS, the Governmental Unit has entered into the Intercept Agreement by and between the Finance Authority and the Governmental Unit whereby the Pledged Revenues due to the Governmental Unit from the Distributing State Agency are intercepted by the Finance Authority, or the Trustee, as its assignee, to make payments due under this Loan Agreement; and

WHEREAS, the Finance Authority may assign and transfer this Loan Agreement to the Trustee pursuant to the Indenture; and

WHEREAS, except as described on the Term Sheet, the Pledged Revenues have not been pledged or hypothecated in any manner or for any purpose at the time of the execution and delivery of this Loan Agreement, and the Governmental Unit desires to pledge the Pledged Revenues toward the payment of this Loan Agreement; and

WHEREAS, the obligation of the Governmental Unit hereunder shall constitute a special, limited obligation of the Governmental Unit, limited to the Pledged Revenues, and shall not constitute a general obligation or other indebtedness of the Governmental Unit or a charge against the general credit or ad valorem taxing power of the Governmental Unit or the State; and

WHEREAS, the execution, performance and delivery of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Governing Body pursuant to the Ordinance; and

WHEREAS, the execution and performance of this Loan Agreement and the Intercept Agreement have been authorized, approved and directed by all necessary and appropriate action of the Finance Authority.

NOW, THEREFORE, for and in consideration of the premises and the mutual promises and covenants herein contained, the parties hereto agree:

## ARTICLE I DEFINITIONS

Capitalized terms defined in the foregoing recitals shall have the same meaning when used in this Loan Agreement unless the context clearly requires otherwise. Capitalized terms not defined in the recitals and defined in this Article I shall have the same meaning when used in this Loan Agreement including the foregoing recitals, unless the context clearly requires otherwise.

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12, 7-1-6.4, 7-1-6.15 and 7-9-4, NMSA 1978, as amended, and enactments of the Governing Body relating to this Loan Agreement and Intercept Agreement, including the Ordinance.

“Additional Payment Obligations” mean payments in addition to Loan Agreement Payments required by this Loan Agreement, including, without limitation, payments required to replenish the Loan Agreement Reserve Account and payments required pursuant to the provisions of Article IX and Article X hereof.

“Aggregate Annual Debt Service Requirement” means the total principal, interest, and premium payments, if any, due and payable pursuant to this Loan Agreement and on all Parity Obligations secured by a pledge of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means, in the case of the Governmental Unit, the Mayor, City Manager and City Finance Director, and, in the case of the Finance Authority, the Chairman, Vice-Chairman and Secretary of the Board of Directors and the Chief Executive Officer or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Blended Interest Rate” means the rate of interest on this Loan Agreement as shown on the Term Sheet.

“Bond Counsel” means nationally recognized bond counsel experienced in matters of municipal law, satisfactory to the Trustee and listed in the list of municipal bond attorneys, as

published semiannually by The Bond Buyer's Municipal Marketplace, or any successor publication, acting as loan counsel to the Finance Authority.

"Bonds" means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse this Loan Agreement.

"Closing Date" means the date of execution, delivery and funding of this Loan Agreement as shown on the Term Sheet.

"Code" means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

"Distributing State Agency" means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues to or on behalf of the Governmental Unit.

"Event of Default" means one or more events of default as defined in Section 10.1 of this Loan Agreement.

"Expenses" means the costs of issuance of this Loan Agreement and the Bonds, if any, and periodic and regular fees and expenses incurred by the Finance Authority in administering this Loan Agreement, including legal fees.

"Finance Authority Debt Service Account" means the debt service account established in the name of the Governmental Unit within the Debt Service Fund, as defined in the Indenture, held and administered by the Finance Authority to pay principal and interest, if any, on this Loan Agreement as the same become due.

"Fiscal Year" means the period beginning on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

"Governing Body" means the duly organized County City of the Governmental Unit, and any successor governing body of the Governmental Unit.

"Indenture" means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, as successor trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as successor trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

"Independent Accountant" means: (i) an accountant employed by the State and under the supervision of the State Auditor; or (ii) any certified public accountant or firm of such accountants duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the Governmental Unit who: (a) is, in fact, independent and not under the domination of the Governmental Unit; (b) does not have any substantial interest, direct or

indirect, with the Governmental Unit; and (c) is not connected with the Governmental Unit as an officer or employee of the Governmental Unit, but who may be regularly retained to make annual or similar audits of the books or records of the Governmental Unit.

“Intercept Agreement” means the Intercept Agreement dated September 4, 2020, between the Governmental Unit and the Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of the Pledged Revenues in amounts sufficient to pay Loan Agreement Payments, and any amendments or supplements to the Intercept Agreement.

“Interest Component” means the portion of each Loan Agreement Payment paid as interest on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan” means the funds in the Loan Agreement Principal Amount to be loaned to the Governmental Unit by the Finance Authority pursuant to this Loan Agreement.

“Loan Agreement” means this loan agreement and any amendments or supplements hereto, including the exhibits attached to this loan agreement.

“Loan Agreement Balance” means, as of any date of calculation, the Loan Agreement Principal Amounts less the aggregate principal amounts paid or prepaid pursuant to the provisions of this Loan Agreement.

“Loan Agreement Payment” means, collectively, the Principal Component and the Interest Component, if any, to be paid by the Governmental Unit as payment of this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Payment Date” means each date a payment is due on this Loan Agreement as shown on Exhibit “B” hereto.

“Loan Agreement Principal Amount” means the original principal amount of this Loan Agreement as shown on the Term Sheet.

“Loan Agreement Reserve Account” means the loan agreement reserve account established in the name of the Governmental Unit under the Indenture funded by the Governmental Unit pursuant to the terms of this Loan Agreement and administered by the Trustee pursuant to the Indenture. The Loan Agreement Reserve Account is to be funded only upon the circumstances provides in Section 5.2(c) of this Loan Agreement.

“Loan Agreement Reserve Requirement” means, with respect to the Loan, the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under the Loan Agreement; or (iii) the maximum annual principal and interest requirements under the Loan Agreement. The Loan Agreement Reserve Requirement, if any, shall be calculated every year on or about June 1.

“Loan Agreement Term” means the term of this Loan Agreement as provided under Article III of this Loan Agreement.

“NMSA” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

“Ordinance” means the Governmental Unit Ordinance No. \_\_\_\_\_ adopted by the Governing Body on July 28, 2020, as supplemented by the Pricing Certificate executed on \_\_\_\_\_, 2020, approving this Loan Agreement and the Intercept Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement Payments as shown on the Term Sheet.

“Parity Obligations” means this Loan Agreement, and any other obligations, now outstanding or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on a parity with this Loan Agreement, including any such obligations shown on the Term Sheet.

“Permitted Investments” means securities which are at the time legal investments of the Governmental Unit for the money to be invested, as applicable, including but not limited to the following, if permitted by law: (i) securities that are issued by the United States government or by its agencies or instrumentalities and that are either direct obligations of the United States, the federal home loan mortgage association, the federal national mortgage association, the federal farm credit bank, federal home loan banks or the student loan marketing association or that are backed by the full faith and credit of the United States government; (ii) negotiable securities of the State; (iii) money market funds which invest solely in obligations described in clause (i) above which are rated in the highest rating category by Moody’s Investors Service, Inc., or S&P Global Ratings; and (iv) the State Treasurer’s short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, as amended, and operated, maintained and invested by the office of the State Treasurer.

“Pledged Revenues” means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4, NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Distributing State Agency to the Governmental Unit as authorized by Sections 7-1-6.1 and 7-1-6.4, NMSA 1978, and which remittances as of the date of adoption of this Ordinance are equal to one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported to the Governmental Unit for the month for which such remittance is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the Governmental Unit under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the Governmental Unit as set forth above, or (ii) the maximum amount at any time provided hereinafter to be remitted to the Governmental Unit under applicable law; and provided further, the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Ordinance.

“Principal Component” means the portion of each Loan Agreement Payment paid as principal on this Loan Agreement as shown on Exhibit “B” hereto.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of this Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means the project(s) described on the Term Sheet.

“Term Sheet” means Exhibit “A” attached hereto.

“Trustee” means BOKF, NA, Albuquerque, New Mexico, or any successor trust company, national or state banking association or financial institution at the time appointed the Trustee by the Finance Authority.

“Unassigned Rights” means the rights of the Finance Authority to receive payment of the administrative expenses, reports and indemnity against claims pursuant to the provisions of this Loan Agreement which are withheld in the granting clauses of the Indenture from the pledge, assignment and transfer of this Loan Agreement to the Trustee.

## ARTICLE II REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1 Representations, Covenants and Warranties of the Governmental Unit.  
The Governmental Unit represents, covenants and warrants:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Governmental Unit contained in this Loan Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Governmental Unit to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Governmental Unit and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Loan Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Governmental Unit by the provisions of this Loan Agreement and the Ordinance shall be exercised or performed by the Governmental Unit or by such members, officers, or officials of the Governmental Unit as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Loan Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Governmental Unit or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer, agent or employee of the Governmental Unit executing this Loan Agreement shall be liable personally on this Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Loan Agreement and Intercept Agreement. The Governmental Unit is a political subdivision of the State and is duly organized and existing under the statutes and laws of the State. Pursuant to the Act, as amended and supplemented from time to time, the Governmental Unit is authorized by the Act to enter into the transactions

contemplated by this Loan Agreement and the Intercept Agreement and to carry out its obligations hereunder and thereunder. The Governmental Unit has duly authorized and approved the execution and delivery of this Loan Agreement, the Intercept Agreement, and the other documents related to the transaction.

(d) Use of Loan Agreement Proceeds. The Governmental Unit shall proceed without delay in applying the proceeds of this Loan Agreement (less the deposits to the Loan Agreement Reserve Account, if any, and the Finance Authority Debt Service Account) to the financing of the Project.

(e) Payment of Loan Agreement. The Governmental Unit shall promptly pay Loan Agreement Payments, as specified in Exhibit "B" hereto, according to the true intent and meaning of this Loan Agreement. Loan Agreement Payments are payable solely from the Pledged Revenues or from the proceeds of refunding bonds or other refunding obligations which the Governmental Unit may hereafter issue in its sole discretion and which are payable from the Pledged Revenues; and nothing in this Loan Agreement shall be construed as obligating the Governmental Unit to pay Loan Agreement Payments from any general or other fund of the Governmental Unit other than such special funds. Nothing contained in this Loan Agreement, however, shall be construed as prohibiting the Governmental Unit in its sole and absolute discretion, from making such payments from any moneys which may be lawfully used, and which are legally available, for that purpose.

(f) Financing of Project. The Project will consist of refunding the Refunded Bonds. The Project will be financed so as to comply with all applicable ordinances, resolutions and regulations, if any, and any and all applicable laws relating to the financing of the Project and to the use of the Pledged Revenues.

(g) Necessity of Project. The financing of the Project under the terms and conditions provided for in this Loan Agreement is necessary, convenient and in furtherance of the governmental purposes of the Governmental Unit and is in the best interests of the Governmental Unit and its residents.

(h) Legal, Valid and Binding Special Obligation. The Governmental Unit has taken all required action necessary to authorize the execution and delivery of this Loan Agreement and the Intercept Agreement, and this Loan Agreement and the Intercept Agreement constitute legal, valid and binding special obligations of the Governmental Unit enforceable in accordance with their terms.

(i) Loan Agreement Term. The weighted average maturity of \_\_\_\_\_ years of the Loan Agreement does not exceed 120% of the remaining reasonably expected life of the project financed by the Refunded Bonds which is \_\_\_\_\_ years.

(j) Use of Project. During the Loan Agreement Term, the Project will at all times be used for the purpose of benefiting the Governmental Unit as a whole.

(k) No Private Activity. The Governmental Unit is a "governmental unit" within the meaning of Sections 103 and 141(b)(6) of the Code. In addition, no amounts disbursed from the Program Account and used to finance the Project shall be used in the trade or

business of a person who is not a “governmental unit” within the meaning of Sections 103 and 141(b)(6) of the Code.

(l) No Excess Loan Agreement Proceeds. The amount loaned to the Governmental Unit under this Loan Agreement as set forth on the Term Sheet does not exceed the sum of: (i) the cost of the Project; (ii) the Loan Agreement Reserve Requirement; and (iii) an amount necessary to pay the costs related to issuance of the Bonds, if any.

(m) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement and the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions in this Loan Agreement and the Intercept Agreement, nor the consummation of the transactions contemplated herein and therein, conflicts with or results in a breach of terms, conditions or provisions of any restriction or any agreement or instrument to which the Governmental Unit is a party or by which the Governmental Unit is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Governmental Unit or its properties are subject, or constitutes a default under any of the foregoing.

(n) Irrevocable Enactments. While this Loan Agreement remains outstanding and unpaid, any ordinance, resolution or other enactment of the Governing Body applying the Pledged Revenues for the payment of this Loan Agreement, including the Ordinance, shall be irrevocable until this Loan Agreement has been paid in full as to both principal and interest, and shall not be subject to amendment or modification in any manner which would in any way jeopardize the timely payment of Loan Agreement Payments.

(o) Outstanding Debt. Except for the Parity Obligations, if any, described on the Term Sheet, there are currently no outstanding bonds, notes or other obligations of the Governmental Unit which are payable from and secured by a parity lien on the Pledged Revenues. No additional indebtedness, bonds or notes of the Governmental Unit payable on a priority ahead of the indebtedness herein authorized out of the Pledged Revenues shall be created or incurred while this Loan Agreement remains outstanding.

(p) No Litigation. To the knowledge of the Governmental Unit, no litigation or proceeding is pending or threatened against the Governmental Unit or any other person affecting the right of the Governmental Unit to execute or deliver this Loan Agreement or the Intercept Agreement or to comply with its obligations under this Loan Agreement or the Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Governmental Unit nor compliance by the Governmental Unit with the obligations under such agreements, requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(q) No Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Loan Agreement and the Intercept Agreement, would constitute an Event of Default on the part of the Governmental Unit under this Loan Agreement or the Intercept Agreement.

(r) Pledged Revenues Not Budgeted. The portion of the Pledged Revenues necessary to pay the Loan Agreement Payments, as and when due, is not needed or budgeted to pay current or anticipated operational or other expenses of the Governmental Unit.

(s) Expected Coverage Ratio. The Pledged Revenues (giving credit for any increase in Pledged Revenues which has received final approval of the Governing Body and become effective) from the Fiscal Year immediately preceding the Closing Date were equal to or exceeded, and, on an ongoing basis during each year of the Loan Agreement Term, are reasonably expected to equal or exceed, one hundred twenty-five percent (125%) of the maximum Aggregate Annual Debt Service Requirement.

(t) No Extension of Interest Payments. The Governmental Unit will not extend or be a party to the extension of the time for paying any interest on this Loan Agreement.

(u) Governmental Unit's Existence. The Governmental Unit will maintain its corporate identity and existence so long as this Loan Agreement is unpaid, unless another political subdivision by operation of law succeeds to the liabilities and rights of the Governmental Unit without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(v) Continuing Disclosure. The Governmental Unit covenants that it shall provide continuing disclosure to the Finance Authority, as the Finance Authority may require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize the Loan Agreement Payments by issuance of Bonds by the Finance Authority pursuant to the Indenture, and notification of any event deemed material by the Finance Authority.

(w) Tax Covenants. The Governmental Unit covenants that it shall restrict the use of the proceeds of this Loan Agreement in such manner and to such extent, if any, as may be necessary so that this Loan Agreement will not constitute an arbitrage bond under Section 148 of the Code and that it shall pay any applicable rebate to the Internal Revenue Service. Authorized Officers are hereby authorized and directed to execute an Arbitrage and Tax Certificate as may be required by the Finance Authority and such additional certificates as shall be necessary to establish that this Loan Agreement is not an "arbitrage bond" within the meaning of Section 148 of the Code and the Treasury Regulations promulgated or proposed with respect thereto, including Treasury Regulation Sections 1.148-1 through 1.148-11, 1.149 and 1.150 as the same currently exist, or may from time to time hereafter be amended, supplemented or revised. The Governmental Unit covenants to comply with the provisions of any such Arbitrage and Tax Certificate and the provisions thereof will be incorporated herein by reference to the same extent as if set forth herein. The Governmental Unit covenants that no use will be made of the proceeds of this Loan Agreement, or any funds or accounts of the Governmental Unit which may be deemed to be Gross Proceeds (as defined in Treasury Regulation Section 1.148-1(b)) of this Loan Agreement, which use, if it had been reasonably expected on the Closing Date, would have caused this Loan Agreement to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code. Pursuant to this covenant, the Governmental Unit obligates itself to comply throughout the Loan Agreement Term with the requirements of Sections 103 and 141 through 150 of the Code and the regulations proposed or promulgated with respect thereto. The

Governmental Unit further represents and covenants that no bonds or other evidence of indebtedness of the Governmental Unit payable from substantially the same source as this Loan Agreement have been or will be issued, sold or delivered within fifteen (15) days prior to or subsequent to the Closing Date.

(x) Pledged Revenues Covenants. Pursuant to Sections 7-1-6.4 and 7-1-6.15, NMSA 1978, as amended, the State collects gross receipts taxes from business locations within the Governmental Unit, on land owned by the State within the exterior boundaries of the Governmental Unit, and outside the exterior boundaries of the Governmental Unit on land owned by the Governmental Unit, and distributes each month to the Governmental Unit an amount equal to the product of the quotient of one and two hundred twenty-five thousandths percent (1.225%) divided by the gross tax rate times the net receipts for the month attributable to the gross receipts taxes from those business locations.

Section 2.2 Representations, Covenants and Warranties of the Finance Authority. The Finance Authority represents, covenants and warrants for the benefit of the Governmental Unit as follows:

(a) Authorization of Loan Agreement and Intercept Agreement. The Finance Authority is a public body politic and corporate constituting a governmental instrumentality, separate and apart from the State, duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Loan Agreement and the Intercept Agreement and, by proper action, has duly authorized the execution and delivery of this Loan Agreement and the Intercept Agreement.

(b) Assignment of Rights. The Finance Authority may not pledge or assign the Pledged Revenues, the Loan Agreement Payments or any of its other rights under this Loan Agreement and the Intercept Agreement except to the Trustee pursuant to the Indenture.

(c) No Breach or Default Caused by Loan Agreement or Intercept Agreement. Neither the execution and delivery of this Loan Agreement or the Intercept Agreement, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement or the Intercept Agreement, nor the consummation of the transactions contemplated in this Loan Agreement or the Intercept Agreement, conflicts with or results in a breach of the terms, conditions and provisions of any restriction or any agreement or instrument to which the Finance Authority is a party or by which the Finance Authority is bound or constitutes a default under any of the foregoing and will not conflict with or constitute a violation of any constitutional or statutory provision or order, rule, regulation, decree or resolution of any court, government or governmental authority having jurisdiction over the Finance Authority or its property, and which conflict or violation will have a material adverse effect on the Finance Authority or the financing of the Project.

(d) No Litigation. To the knowledge of the Finance Authority, there is no litigation or proceeding pending or threatened against the Finance Authority or any other person affecting the right of the Finance Authority to execute or deliver this Loan Agreement or the Intercept Agreement, or to comply with its obligations under this Loan Agreement or the

Intercept Agreement. Neither, the execution and delivery of this Loan Agreement or the Intercept Agreement by the Finance Authority, nor compliance by the Finance Authority with its obligations under this Loan Agreement and the Intercept Agreement, requires the approval of any regulatory body, or any other entity, which approval has not been obtained.

(e) Legal, Valid and Binding Obligations. This Loan Agreement and the Intercept Agreement constitute the legal, valid and binding obligations of the Finance Authority enforceable in accordance with their terms.

(f) Tax-Exempt Reimbursement of Amount Loaned. The Finance Authority intends to reimburse the public project revolving fund (as defined in the Finance Authority Act) for the amount of the Loan from the proceeds of tax-exempt bonds which the Finance Authority expects to issue within eighteen (18) months of the Closing Date.

(g) Compliance with Securities Laws. The Finance Authority acknowledges that no offering document or prospectus has been prepared by the Governmental Unit with respect to this Loan Agreement. The Finance Authority is a sophisticated accredited investor regularly making loans and purchasing securities similar to this Loan Agreement and has been provided with and has reviewed such information as it deems relevant in making its decision to make the Loan to the Governmental Unit. Other than the pledge to the Trustee described above, the Finance Authority will not sell, pledge, transfer, convey, hypothecate, mortgage or dispose of this Loan Agreement, or any portion thereof, except to persons who have been provided sufficient information with which to make an informed investment decision regarding this Loan Agreement and in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder and applicable state securities laws and regulations.

(h) Finance Authority Compliance with Policies. As related to this Loan Agreement, the Finance Authority has complied with all policies and procedures as adopted and approved by the Finance Authority Board of Directors, or such policies have been waived by the Finance Authority Board of Directors.

### ARTICLE III LOAN AGREEMENT TERM

The Loan Agreement Term shall commence on the Closing Date and shall not terminate until this Loan Agreement has been paid in full or provision for the payment of this Loan Agreement has been made pursuant to Article VIII hereof.

### ARTICLE IV LOAN; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the Loan Agreement Principal Amount as follows:

(a) To the Trustee, the amount shown on the Term Sheet as the Program Account deposit shall be deposited into the Governmental Unit's Program Account to be maintained by the Trustee pursuant to the Indenture and disbursed pursuant to Section 6.2 hereof

at the direction of the Governmental Unit as needed by the Governmental Unit for the Project;  
and

(b) To the Finance Authority, the amount shown on the Term Sheet as the Finance Authority Debt Service Account deposit shall be deposited into the Finance Authority Debt Service Account to be maintained by the Finance Authority or its assignee and utilized as provided in Section 5.2 hereof.

No deposit of proceeds of the Loan or other Governmental Unit moneys into the Loan Agreement Reserve Account shall be required on the Closing Date or at any time thereafter, except in the circumstances and on the conditions described in subsection (c) of Section 5.2 hereof.

ARTICLE V  
LOAN TO THE GOVERNMENTAL UNIT;  
PAYMENTS BY THE GOVERNMENTAL UNIT

Section 5.1 Loan to the Governmental Unit; Payment Obligations Limited to Pledged Revenues; Pledge of Pledged Revenues. The Finance Authority hereby lends to the Governmental Unit and the Governmental Unit hereby borrows from the Finance Authority an amount equal to the Loan Agreement Principal Amount. The Governmental Unit promises to pay, but solely from the sources pledged herein, the Loan Agreement Payments as herein provided. The Governmental Unit does hereby convey, assign and pledge unto the Finance Authority and unto its successors in trust forever all right, title and interest of the Governmental Unit in and to: (i) the Pledged Revenues to the extent required to pay the Loan Agreement Payments on parity with the Parity Obligations; (ii) the Finance Authority Debt Service Account, such account being held by the Finance Authority; (iii) the Program Account, such account being held by the Trustee, (iv) the Loan Agreement Reserve Account, if such account is created and funded pursuant to the terms of Section 5.2(c) and (d) of this Loan Agreement, and (iv) all other rights hereinafter granted, for the securing of the Governmental Unit's obligations under this Loan Agreement, including payment of the Loan Agreement Payments and Additional Payment Obligations; provided, however, that if the Governmental Unit, its successors or assigns, shall well and truly pay, or cause to be paid, all Loan Agreement Payments at the time and in the manner contemplated by this Loan Agreement, then, upon such final payment or provision for payment by the Governmental Unit, this Loan Agreement and the rights created thereby shall terminate; otherwise, this Loan Agreement shall remain in full force and effect. The Loan Agreement Payments shall, in the aggregate, be sufficient to pay the Principal Component and Interest Component when due, the payment schedule of which is attached hereto as Exhibit "B."

The pledge of the Pledged Revenues and the lien thereon shall be effective upon the Closing Date. The Governmental Unit and the Finance Authority acknowledge and agree that the Loan Agreement Payments of the Governmental Unit hereunder are limited to the Pledged Revenues, and that this Loan Agreement shall constitute a special, limited obligation of the Governmental Unit. No provision of this Loan Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Governmental Unit within the meaning of any constitutional or statutory debt limitation. No provision of this Loan Agreement shall be construed to pledge or to create a lien on any class or source of Governmental Unit

moneys other than the Pledged Revenues, nor shall any provision of this Loan Agreement restrict the future issuance of any bonds or obligations payable from any class or source of Governmental Unit moneys other than the Pledged Revenues. In addition, to the extent not required for the payment of obligations of the Governmental Unit hereunder, the Pledged Revenues may be utilized by the Governmental Unit for any other purposes permitted by law.

Section 5.2 Payment Obligations of Governmental Unit. The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues either pursuant to the Intercept Agreement or directly from the Governmental Unit as provided by this Loan Agreement and the Intercept Agreement, the amounts provided in subsections (a)(i) and (ii) of this Section 5.2 for deposit into the Finance Authority Debt Service Account and the amount provided in subsection (c) for deposit into the Loan Agreement Reserve Account. The Finance Authority Debt Service Account shall be established and held by the Finance Authority and the Loan Agreement Reserve Account shall be established and held by the Trustee, each on behalf of the Governmental Unit. All Pledged Revenues received by the Finance Authority pursuant to this Section 5.2 shall be accounted for and maintained on an ongoing basis by the Finance Authority in the Finance Authority Debt Service Account and all Loan Agreement Payments shall be remitted to the Trustee. The amounts on deposit in the Finance Authority Debt Service Account and Loan Agreement Reserve Account shall be expended and used by the Finance Authority or the Trustee, as the case may be, only in the manner and order of priority specified below.

(a) As a first charge and lien, but not an exclusive first charge and lien, on the Pledged Revenues (on a parity with the lien on the Pledged Revenues created by any outstanding Parity Obligations), the Governmental Unit shall remit to the Finance Authority, and the Finance Authority shall transfer and deposit into the Finance Authority Debt Service Account the following from the Pledged Revenues received either directly or pursuant to the Intercept Agreement, which the Finance Authority shall transfer to the Trustee in accordance with the Indenture:

(i) Interest Components. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Interest Component coming due on this Loan Agreement (which is December 1, 2020), and (B) on the first day of each month thereafter, one-sixth (1/6) of the amount necessary to pay the next maturing Interest Component on this Loan Agreement as described in Exhibit "B";

(ii) Principal Payments. (A) Monthly, beginning on the first day of the month following the Closing Date, an amount in equal monthly installments which is necessary to pay the first maturing Principal Component (which is June 1, 2022), and (B) on the first day of each month thereafter, one-twelfth (1/12) of the amount which is necessary to pay the next maturing Principal Component on this Loan Agreement during the Loan Agreement Term, as described in Exhibit "B".

The Governmental Unit shall transfer to the Finance Authority from the Pledged Revenues the amounts provided in subsections (i) and (ii) of this Section 5.2(a), and the Finance Authority shall not intercept such amounts from the Pledged Revenues pursuant to the Intercept Agreement unless the Governmental Unit fails to timely transfer each such amount, in which

event the Finance Authority shall intercept such amounts from Pledged Revenues pursuant to the Intercept Agreement. Such amounts shall be intercepted in approximately equal monthly payments when distributions are made by the Distributing State Agency in accordance with a schedule prepared by the Finance Authority at the commencement of interception of payments. The monthly intercepted installments will be amounts sufficient, when combined, to meet the payments described in subparagraphs (a)(i) and (ii) above, on a parity with payments on the Governmental Unit's outstanding Parity Obligations.

(b) Each Loan Agreement Payment shall be transferred by the Finance Authority from the Finance Authority Debt Service Account to the Trustee.

(c) No deposit shall be required in the Loan Agreement Reserve Account on the Closing Date or at any time thereafter, except in the event that as of the end of any Fiscal Year when the Loan is outstanding, Pledged Revenues shall decline to an amount less than two times the average annual principal and interest requirements of the Loan and any additional Parity Obligations then outstanding. In such event, there shall be transferred monthly, on the first day of the month, into the Debt Service Reserve Account an amount that in equal monthly installments will create, within 24 months, a reserve equal to one year's average annual debt service for all remaining Principal Components and Interest Components on the Loan (the "Required Reserve Amount"), subject to and junior to the deposits required by paragraphs 5.2(a)(i) and (ii) above and the payment of principal and interest on all outstanding Parity Obligations. Moneys in the Loan Agreement Reserve Account shall be held and administered by the Trustee and shall be used only to prevent deficiencies in the payment of the Principal Component and Interest Component of the Loan Agreement Payments resulting from a failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay debt service requirements on the Loan; provided, that the final two Interest Components and the final Principal Component on the Loan shall be payable from the Loan Agreement Reserve Account. If funds are withdrawn from the Loan Agreement Reserve Account to pay debt service on the Loan, at the direction of the Finance Authority or the Trustee, additional Pledged Revenues shall be deposited into the Loan Agreement Reserve Account in amounts in equal monthly installments sufficient to restore the amount on deposit therein to the Loan Agreement Reserve Requirement within one (1) year following such withdrawal; provided, that no additional Pledged Revenues shall be intercepted to replenish the Loan Agreement Reserve Account following the transfer of the amount in the Loan Agreement Reserve Account to the Finance Authority Debt Service Account for payment of the final two Interest Components and the final Principal Component. The Required Reserve Amount shall be calculated and determined as of (i) the last day of each Fiscal Year or (ii) the date of delivery of any indebtedness of the City issued to refund all or a portion of the Loan.

After the funding of the Loan Agreement Reserve Account as aforesaid, if the Pledged Revenues shall increase to an amount exceeding two times the average annual principal and interest requirements of the Loan and any additional Parity Obligations then outstanding for 24 consecutive months, any money or securities in the Loan Agreement Reserve Account shall be transferred to other Governmental Unit funds or accounts, and the procedure provided in the first paragraph of this subparagraph (c) shall be reinstated. The moneys (if any) in the Loan Agreement Reserve Account shall be accumulated and maintained as a continuing reserve to be used only to prevent deficiencies in the payment of the principal of and interest on the Loan

Agreement resulting from failure to deposit into the Finance Authority Debt Service Account sufficient funds to pay the principal and interest as the same become due.

Notwithstanding any other provisions hereof, the Finance Authority shall have the right to waive the requirement of the Loan Agreement Reserve Account.

(d) Cash accumulated in the Loan Agreement Reserve Account shall not be invested in a manner which could cause the Loan Agreement to become arbitrage bonds within the meaning of the Code. Any investments held in the Loan Agreement Reserve Account shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the Loan Agreement Reserve Account exceeds the Loan Agreement Reserve Requirement, all amounts in excess of the Loan Agreement Reserve Requirement shall be transferred to the credit of the Governmental Unit to the Finance Authority Debt Service Account and used to pay principal of and interest on the Loan Agreement.

(e) No payment shall be made into the Finance Authority Debt Service Account or the Loan Agreement Reserve Account if the amounts in such accounts total a sum at least equal to the entire aggregate amount due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such accounts in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

(f) Subject to the foregoing deposits, the Finance Authority or the Trustee shall annually use the balance of the Pledged Revenues received, if any, at the request of the Governmental Unit: (i) to credit against upcoming Loan Agreement Payments; or (ii) to distribute to the Governmental Unit for any purpose permitted by law.

Section 5.3 Manner of Payment. All payments of the Governmental Unit hereunder shall be paid in lawful money of the United States of America to the Finance Authority at the address designated in Section 11.1 herein, for remittance to the Trustee. The obligation of the Governmental Unit to make payments hereunder, from and to the extent of the available Pledged Revenues, shall be absolute and unconditional in all events, except as expressly provided hereunder, and payment hereunder shall not be abated through accident or unforeseen circumstances. Notwithstanding any dispute between the Governmental Unit, the Finance Authority, the Trustee, any vendor or any other person, the Governmental Unit shall make all deposits hereunder, from and to the extent of the available Pledged Revenues, when due and shall not withhold any deposit hereunder pending final resolution of such dispute, nor shall the Governmental Unit assert any right of set-off or counterclaim against its obligation to make such deposits required hereunder.

Section 5.4 Disposition of Payments by the Trustee. The Trustee shall deposit all moneys received from the Finance Authority under this Loan Agreement in accordance with the Indenture.

Section 5.5 Additional Parity Obligations. No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional Parity Obligations payable from the Pledged Revenues, nor to prevent the issuance of bonds or other obligations refunding all or a part of this Loan Agreement; provided, however, that before any such additional Parity Obligations are actually issued (excluding refunding bonds or refunding obligations which refund Parity Obligations but including parity refunding bonds and obligations which refund subordinate obligations as provided in Section 5.6 hereof), it must be determined that:

(a) The Governmental Unit is then current in all of the accumulations required to be made into the Finance Authority Debt Service Account and the Loan Agreement Reserve Account as provided herein.

(b) No default shall exist in connection with any of the covenants or requirements of the Ordinance or this Loan Agreement.

(c) The Pledged Revenues received by or credited to the Governmental Unit for the Fiscal Year or for any twelve (12) consecutive months out of the twenty-four (24) months preceding the date of the issuance of such additional Parity Obligations (the "Historic Test Period") shall have been sufficient to pay an amount representing one hundred twenty-five percent (125%) of the combined maximum Aggregate Annual Debt Service Requirement coming due in any subsequent Fiscal Year on the then outstanding Parity Obligations and the Parity Obligations proposed to be issued (excluding the accumulation of any reserves therefor).

(d) A written certification or opinion by the Governmental Unit's Treasurer or chief financial officer or by an Independent Accountant that the Pledged Revenues for the Historic Test Period are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the Governmental Unit to authorize, issue, sell and deliver the Parity Obligations proposed to be issued.

(e) No provision of this Loan Agreement shall be construed in such a manner as to prevent the issuance by the Governmental Unit of additional bonds or other obligations payable from the Pledged Revenues constituting a lien upon such Pledged Revenues subordinate and junior to the lien of this Loan Agreement nor to prevent the issuance of bonds or other obligations refunding all or part of this Loan Agreement as permitted by Section 5.6 hereof.

(f) The Governmental Unit shall not issue bonds or other obligations payable from the Pledged Revenues having a lien thereon prior and superior to this Loan Agreement.

Section 5.6 Refunding Obligations. The provisions of Section 5.5 hereof are subject to the following exceptions:

(a) If at any time after the Closing Date, while this Loan Agreement, or any part thereof, is outstanding, the Governmental Unit shall find it desirable to refund any outstanding bonds or other outstanding obligations payable from the Pledged Revenues, this Loan Agreement, such bonds or other obligations, or any part thereof, may be refunded (but the holders of this Loan Agreement or bonds to be refunded may not be compelled to surrender this Loan Agreement or their bonds, unless this Loan Agreement, the bonds or other obligations, at

the time of their required surrender for payment, shall then mature, or shall then be callable for prior redemption at the Governmental Unit's option), regardless of whether the priority of the lien for the payment of the refunding obligations on the Pledged Revenues is changed, except as provided in subparagraph (e) of Section 5.5 hereof and in subparagraphs (b) and (c) of this Section.

(b) No refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued on a parity with this Loan Agreement unless:

(i) The outstanding obligations so refunded are Parity Obligations and the refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof.

(c) The refunding bonds or other obligations so issued shall enjoy complete equality of lien on the Pledged Revenues with the portion of this Loan Agreement or any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or such other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of this Loan Agreement or the bonds or other obligations of the same issue refunded thereby. If only a part of this Loan Agreement or the outstanding bonds and any other outstanding obligations of any issue or issues payable from the Pledged Revenues is refunded, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of such obligations, unless:

(i) The refunding bonds or other refunding obligations do not increase any aggregate annual principal and interest obligations evidenced by such refunded obligations and by the outstanding obligations not refunded on and prior to the last maturity date of such unrefunded obligations; or

(ii) The refunding bonds or other refunding obligations are issued in compliance with Section 5.5 hereof; or

(iii) The lien on the Pledged Revenues for the payment of the refunding obligations is subordinate to each such lien for the payment of any obligations not refunded.

(d) Any refunding bonds or other refunding obligations payable from the Pledged Revenues shall be issued with such details as the Governmental Unit may provide by ordinance or resolution, but without any impairment of any contractual obligations imposed upon the Governmental Unit by any proceedings authorizing the issuance of any unrefunded portion of such outstanding obligations of any one or more issues (including, but not necessarily limited to, this Loan Agreement).

Section 5.7 Investment of Governmental Unit Funds. Money on deposit in the Finance Authority Debt Service Account established by the Finance Authority for the Governmental Unit may be invested by the Finance Authority in Permitted Investments at the discretion of the Finance Authority. Money on deposit in the Program Account and the Loan Agreement Reserve

Account held by the Trustee and created hereunder may be invested by the Trustee in Permitted Investments at the written direction of the Finance Authority or at the discretion of the Trustee. Any earnings on any of said accounts shall be held and administered in each respective account and utilized in the same manner as the other moneys on deposit therein.

Section 5.8 Governmental Unit May Budget for Payments. The Governmental Unit may, in its sole discretion, but without obligation and subject to the Constitution of the State, governing laws, and its budgetary requirements, make available properly budgeted and legally available funds to defray any insufficiency of Pledged Revenues to pay Loan Agreement Payments; provided, however, the Governmental Unit has not covenanted and cannot covenant to make such funds available and has not pledged any of such funds for such purpose.

## ARTICLE VI THE PROJECT

Section 6.1 Agreement to Finance the Project. The Governmental Unit hereby agrees that to effectuate the purposes of this Loan Agreement and to effectuate the financing of the Project, it shall make, execute, acknowledge and transmit any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and, in general, do all things which may be requisite or proper to finance the Project. The Governmental Unit agrees to finance the Project through the application of moneys to be disbursed from the Program Account pursuant to Section 6.2 of this Loan Agreement.

Section 6.2 Disbursements From the Program Account. So long as no Event of Default shall occur, the Trustee shall disburse moneys from the Program Account in accordance with Section 6.2 of the Indenture upon receipt by the Trustee of a requisition substantially in the form of Exhibit "C" attached hereto signed by an Authorized Officer of the Governmental Unit.

No disbursement shall be made from the Program Account without the approval of Bond Counsel: (i) to reimburse the Governmental Unit's own funds for expenditures made prior to the Closing Date; (ii) to refund or advance refund any tax-exempt obligations issued by or on behalf of the Governmental Unit, other than the Refunded Bonds; (iii) to be used, directly or indirectly, to finance a project used or to be used in the trade or business of a person who is not a "governmental unit," within the meaning of Section 141(b)(6) of the Code; or (iv) to expend funds after the date that is three (3) years after the execution and delivery of this Loan Agreement.

Section 6.3 Completion of the Project. Upon completion of the Project, an Authorized Officer of the Governmental Unit shall deliver a certificate to the Finance Authority and the Trustee substantially in the form of Exhibit "D" attached hereto stating that, to the best of his or her knowledge, the Project has been completed and accepted by the Governmental Unit, and all costs have been paid. Notwithstanding the foregoing, such certificate shall state that it is given without prejudice to any rights against third parties which exist at the date of such certificate or which may subsequently come into being.

Section 6.4 Application of Loan Agreement Proceeds Subsequent to Completion of the Project. Upon completion of the Project as signified by delivery of the completion certificate

contemplated in Section 6.3 hereof or in the event that the Finance Authority and the Trustee shall not have received a certificate of completion as required by Section 6.3 hereof by the date three (3) years from the Closing Date (or such later date as is approved in writing by Bond Counsel), the Trustee shall transfer the amounts remaining in the Program Account (except amounts necessary for payment of amounts not then due and payable) to the Finance Authority Debt Service Account and such amounts shall be used for the payment of Loan Agreement Payments.

## ARTICLE VII COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1 Further Assurances and Corrective Instruments. The Finance Authority and the Governmental Unit agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project or of the Pledged Revenues, or for otherwise carrying out the intention hereof.

Section 7.2 Finance Authority and Governmental Unit Representatives. Whenever under the provisions hereof the approval of the Finance Authority or the Governmental Unit is required, or the Governmental Unit or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Governmental Unit by an Authorized Officer of the Finance Authority or the Governmental Unit, as the case may be, and any party hereto shall be authorized to act on any such approval or request.

Section 7.3 Requirements of Law. During the Loan Agreement Term, the Governmental Unit and the Finance Authority shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the parties hereto, the Project or the Pledged Revenues.

Section 7.4 First Lien; Equality of Liens. The Loan Agreement Payments constitute an irrevocable first lien (but not necessarily an exclusive first lien) upon the Pledged Revenues. The Governmental Unit covenants that the Loan Agreement Payments and any Parity Obligations herein authorized to be issued and from time to time outstanding shall be equitably and ratably secured by a first lien on the Pledged Revenues and shall not be entitled to any priority one over the other in the application of the Pledged Revenues regardless of the time or times of the issuance of such obligations, it being the intention of the Governmental Unit that there shall be no priority between the Loan Agreement Payments and any such Parity Obligations regardless of the fact that they may be actually issued and delivered at different times.

Section 7.5 Expeditious Completion. The Governmental Unit shall complete the Project with all practical dispatch.

ARTICLE VIII  
PREPAYMENT OF LOAN AGREEMENT PAYMENTS

Section 8.1 Prepayment. The Governmental Unit is hereby granted the option to prepay any of the Principal Components of this Loan Agreement in whole or in part on any day on or after ten (10) years following the Closing Date without penalty or prepayment premium. The Governmental Unit may designate the due dates of any Principal Components being prepaid in the event of a partial prepayment. Notice of intent to make such prepayment shall be provided to the Finance Authority and the Trustee by the Governmental Unit no less than forty-five (45) days prior to the prepayment date. The Trustee shall recalculate the Loan Agreement Payments due under this Loan Agreement in the event of a partial prepayment in a manner which is consistent with the manner in which the Bonds, if any, are prepaid.

Section 8.2 Defeasance. Should the Governmental Unit pay or make provision for payment of the Loan such that all amounts due pursuant to this Loan Agreement shall be deemed to have been paid and defeased, then the Loan Agreement Payments hereunder shall also be deemed to have been paid, the Governmental Unit's payment obligations hereunder shall be terminated, this Loan Agreement and all obligations contained herein shall be discharged and the pledge hereof released. Such payment shall be deemed made when the Governmental Unit has deposited with an escrow agent, in trust, (i) moneys sufficient to make such payment, and/or (ii) noncallable Government Obligations maturing as to principal and interest in such amount and at such times as will ensure the availability of sufficient moneys to make such payment and when all necessary and proper expenses of the Finance Authority have been paid or provided for. In the event the Governmental Unit makes provisions for defeasance of this Loan Agreement, the Governmental Unit shall cause to be delivered (1) a report of an independent nationally recognized certified public accountant verifying the sufficiency of the escrow established to pay this Loan Agreement in full when due or upon an irrevocably designated prepayment date, and (2) an opinion of Bond Counsel to the effect that this Loan Agreement is no longer outstanding, each of which shall be addressed and delivered to the Finance Authority. Government Obligations within the meaning of this Section 8.2, unless otherwise approved by the Finance Authority, shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

ARTICLE IX  
INDEMNIFICATION

From and to the extent of the Pledged Revenues, to the extent permitted by law, the Governmental Unit shall and hereby agrees to indemnify and save the Finance Authority and the Trustee harmless against and from all claims, by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition or operation of the project funded by the Refunded Bonds during the Loan Agreement Term, from: (i) any act of negligence or other misconduct of the Governmental Unit or breach of any covenant or warranty by the Governmental Unit hereunder; and (ii) the incurrence of any cost or expense in connection with the acquisition or operation of the project funded by the Refunded Bonds in excess of the Loan Agreement

proceeds and interest on the investment thereof. The Governmental Unit shall indemnify and save the Finance Authority and the Trustee harmless, from and to the extent of the available Pledged Revenues, from any such claim arising as aforesaid from (i) or (ii) above, or in connection with any action or proceeding brought thereon and, upon notice from the Finance Authority or the Trustee, shall defend the Finance Authority or the Trustee, as applicable, in any such action or proceeding.

## ARTICLE X EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined. Any one of the following shall be an Event of Default under this Loan Agreement:

(a) Failure by the Governmental Unit to pay any amount required to be paid under this Loan Agreement on the date on which it is due and payable;

(b) Failure by the Governmental Unit to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Loan Agreement, other than as referred to in paragraph (a), for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Governmental Unit by the Finance Authority or the Trustee unless the Finance Authority and the Trustee shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority or the Trustee but cannot be cured within the applicable thirty (30) day period, the Finance Authority and the Trustee will not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Governmental Unit within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of force majeure the Governmental Unit is unable to carry out the agreements on its part herein contained, the Governmental Unit shall not be deemed in default under this paragraph (b) during the continuance of such inability (but force majeure shall not excuse any other Event of Default);

(c) Any warranty, representation or other statement by or on behalf of the Governmental Unit contained in this Loan Agreement or in any instrument furnished in compliance with or in reference to this Loan Agreement is false or misleading in any material respect;

(d) A petition is filed against the Governmental Unit under any bankruptcy, moratorium, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within thirty (30) days after such filing, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests;

(e) The Governmental Unit files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, moratorium, reorganization, arrangement,

insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(f) The Governmental Unit admits insolvency or bankruptcy or its inability to pay its debts as they become due or is generally not paying its debts as such debts become due, or becomes insolvent or bankrupt or makes an assignment for the benefit of creditors, or a custodian (including, without limitation, a receiver, liquidator or trustee) of the Governmental Unit for any of its property is appointed by court order or takes possession thereof and such order remains in effect or such possession continues for more than thirty (30) days, but the Finance Authority and the Trustee shall have the right to intervene in the proceedings prior to the expiration of such thirty (30) days to protect their interests.

Section 10.2 Remedies on Default. Whenever any Event of Default has occurred and is continuing and subject to Section 10.3 hereof, the Finance Authority or the Trustee may take any or all of the following actions as may appear necessary or desirable to collect the payments then due and to become due or to enforce performance of any agreement of the Governmental Unit in this Loan Agreement or the Intercept Agreement:

(a) By mandamus or other action or proceeding or suit at law or in equity to enforce the rights of the Finance Authority and the Trustee under this Loan Agreement and the Intercept Agreement against the Governmental Unit, and compel the Governmental Unit to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein; or

(b) By suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority or the Trustee; or

(c) Intervene in judicial proceedings that affect this Loan Agreement or the Pledged Revenues; or

(d) Cause the Governmental Unit to account as if it were the trustee of an express trust for all of the Pledged Revenues; or

(e) Take whatever other action at law or in equity may appear necessary or desirable to collect amounts then due and thereafter to become due under this Loan Agreement or to enforce any other of its rights thereunder; or

(f) Apply any amounts in the Program Account toward satisfaction of any of the obligations of the Governmental Unit under this Loan Agreement.

Section 10.3 Limitations on Remedies. A judgment requiring a payment of money entered against the Governmental Unit may reach only the available Pledged Revenues.

Section 10.4 No Remedy Exclusive. Subject to Section 10.3 hereof, no remedy herein conferred upon or reserved to the Finance Authority or the Trustee is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder as now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be

construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority or the Trustee to exercise any remedy reserved in this Article X, it shall not be necessary to give any notice, other than such notice as may be required in this Article X.

Section 10.5 Waivers of Events of Default. The Finance Authority or the Trustee may in its discretion waive by written waiver any Event of Default hereunder and the consequences of such an Event of Default provided, however, that there shall not be waived: (i) any Event of Default in the payment of the principal of this Loan Agreement at the date when due as specified herein; or (ii) any default in the payment when due of the interest on this Loan Agreement, unless prior to such waiver or rescission, all arrears of interest, with interest at the rate borne by this Loan Agreement on all arrears of payments of principal and all expenses of the Finance Authority or the Trustee, in connection with such Event of Default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority or the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case, the Finance Authority and the Trustee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 10.6 No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.7 Agreement to Pay Attorneys' Fees and Expenses. In the event that the Governmental Unit shall default under any of the provisions hereof and the Finance Authority or the Trustee shall employ attorneys or incur other expenses for the collection of payments hereunder, or the enforcement of performance or observance of any obligation or agreement on the part of the Governmental Unit herein contained, the Governmental Unit agrees that it shall on demand therefor pay to the Finance Authority or the Trustee, as applicable, the fees of such attorneys and such other expenses so incurred, to the extent that such attorneys' fees and expenses may be determined to be reasonable by a court of competent jurisdiction; provided, however, that the obligation of the Governmental Unit under this Section shall be limited to expenditures from and to the extent of the available Pledged Revenues.

## ARTICLE XI MISCELLANEOUS

Section 11.1 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows: if to the Governmental Unit, City of Gallup, 321 Connelly Street, Gallup, New Mexico 88101, Attention: City Manager; if to the Finance Authority, New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and if to the Trustee, BOKF, NA, 100 Sun Avenue NE, Suite 500, Albuquerque, New Mexico 87109, Attention: Trust Division. The Governmental Unit, the Finance Authority, and the Trustee may, by notice given

hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 11.2 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Governmental Unit and their respective successors and assigns, if any.

Section 11.3 Amendments. The Governmental Unit agrees that this Loan Agreement will not be amended without the prior written consent of the Finance Authority, and, if the Loan has been pledged under the Indenture (as defined herein), without the prior written consent of the Trustee (as defined herein), the Finance Authority and the Governmental Unit, pursuant to the Indenture.

Section 11.4 No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Loan Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, either directly or through the Finance Authority, or against any officer, employee, director, trustee or member of the Governing Body, past, present or future, as an individual so long as such individual was acting in good faith. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director, trustee or member of the Governing Body or of the Finance Authority is hereby expressly waived and released by the Governmental Unit and by the Finance Authority as a condition of and in consideration for the execution of this Loan Agreement.

Section 11.5 Severability. In the event that any provision of this Loan Agreement, other than the requirement of the Governmental Unit to pay hereunder, shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 11.6 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.7 Assignment by the Finance Authority. Pursuant to the Indenture, this Loan Agreement and the Intercept Agreement may be assigned and transferred by the Finance Authority to the Trustee, which assignment and transfer is hereby acknowledged and approved by the Governmental Unit.

Section 11.8 Compliance with Governing Law. It is hereby declared by the Governing Body that it is the intention of the Governmental Unit by the execution of this Loan Agreement to comply in all respects with the provisions of the New Mexico Constitution and statutes as the same govern the pledge of the Pledged Revenues to payment of all amounts payable under this Loan Agreement.

Section 11.9 Applicable Law. This Loan Agreement shall be governed by and construed in accordance with the laws of the State.

Section 11.10 Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Loan Agreement.

(Signature pages follow)

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as approved by the Board of Directors of the Finance Authority on July 23, 2020, has executed this Loan Agreement in its corporate name by its duly authorized officer; and the Governmental Unit has caused this Loan Agreement to be executed in its corporate name and the seal of the Governmental Unit affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: \_\_\_\_\_  
Marquita D. Russel, Chief Executive Officer

PREPARED FOR EXECUTION BY OFFICERS  
OF THE NEW MEXICO FINANCE AUTHORITY:  
Sutin, Thayer & Browne A Professional Corporation  
As Loan Counsel

By: \_\_\_\_\_  
Suzanne Wood Bruckner

APPROVED FOR EXECUTION BY OFFICERS OF  
THE NEW MEXICO FINANCE AUTHORITY:

By: \_\_\_\_\_  
Daniel C. Opperman  
Chief Legal Officer

CITY OF GALLUP, NEW MEXICO

[SEAL]

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

**EXHIBIT "A"**

TERM SHEET

New Mexico Finance Authority Loan No. PPRF-5282

Governmental Unit:	City of Gallup, New Mexico
Project Description:	Refunding of the City of Gallup Gross Receipts Tax Improvement Revenue Bonds, Series 2010A, and paying costs of issuance
Loan Agreement Principal Amount:	\$7,500,000
Disadvantaged Funding Amount:	\$0
Pledged Revenues:	Pursuant to Sections 7-1-6.4 and 7-1-6.15, NMSA 1978, as amended, the State collects gross receipts taxes from business locations within the Governmental Unit, on land owned by the State within the exterior boundaries of the Governmental Unit, and outside the exterior boundaries of the Governmental Unit on land owned by the Governmental Unit, and distributes each month to the Governmental Unit an amount equal to the product of the quotient of one and two hundred twenty-five thousandths percent (1.225%) divided by the gross tax rate times the net receipts for the month attributable to the gross receipts taxes from those business locations.
Coverage Ratio:	125%
Distributing State Agency:	State of New Mexico Taxation and Revenue Department
Currently Outstanding Parity Obligations:	
Additional Parity Bonds Test:	125%
Authorizing Legislation:	Ordinance No. _____ adopted on July 28, 2020, as supplemented by the Pricing Certificate executed on _____, 2020
Closing Date:	September 4, 2020
Blended Interest Rate:	%
Program Account Deposit:	\$ (including \$ costs of issuance)

Loan Agreement Reserve  
Account Deposit:

\$0.00 (Loan Agreement Reserve Requirement is the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements under this Loan Agreement; or (iii) the maximum annual principal and interest requirements under this Loan Agreement), if required to be funded pursuant to Section 5.2(c) hereof.

Finance Authority Debt Service  
Account Deposit:

\$

First Interest Payment Date:

First Principal Payment Date:

Final Payment Date:

PROGRAM ACCOUNT DEPOSITS MUST BE USED WITHIN THREE YEARS UNLESS A  
LATER DATE IS APPROVED IN WRITING TO THE TRUSTEE AND THE FINANCE  
AUTHORITY BY BOND COUNSEL TO THE FINANCE AUTHORITY

**EXHIBIT "B"**

DEBT SERVICE SCHEDULE FOR LOAN REPAYMENT

[SEE ATTACHED]

**EXHIBIT "C"**

FORM OF REQUISITION

RE: \$7,500,000 Loan Agreement by and between the City of Gallup, New Mexico, and the New Mexico Finance Authority (the "Loan Agreement").

TO: BOKF, NA  
c/o New Mexico Finance Authority  
PPRF@nmfa.net

You are hereby authorized to disburse from the Program Account – City of Gallup, New Mexico (2020 GRT 2010 Refunding Loan), with regard to the above-referenced Loan Agreement the following:

LOAN NO.: PPRF-5282

CLOSING DATE: September 4, 2020

REQUISITION NUMBER: \_\_\_\_\_

NAME AND ADDRESS OF PAYEE: \_\_\_\_\_

AMOUNT OF PAYMENT: \$ \_\_\_\_\_

PURPOSE OF PAYMENT: \_\_\_\_\_

Each obligation, item of cost or expense mentioned herein is for costs of the Project, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Program Account – City of Gallup, New Mexico (2020 GRT Refunding Loan).

All representations contained in the Loan Agreement and the related closing documents remain true and correct and the City of Gallup, New Mexico, is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Project is complete or, if not complete, the City of Gallup, New Mexico, shall, and understands its obligation to, complete the financing of the Project from other legally available funds.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: \_\_\_\_\_ By: \_\_\_\_\_

Authorized Officer of Borrower

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

Print Name and Title

**EXHIBIT "D"**

CERTIFICATE OF COMPLETION

RE: \$7,500,000 Loan Agreement by and between the City of Gallup and the New Mexico Finance Authority (the "Loan Agreement").

TO: New Mexico Finance Authority  
PPRF@nmfa.net

Susen Ellis  
Vice President, Corporate Trust  
BOKF, NA  
100 Sun Avenue NE, Suite 500  
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-5282

CLOSING DATE: September 4, 2020

In accordance with Section 6.3 of the Loan Agreement, the undersigned states, to the best of his or her knowledge, that the financing of the Project has been completed and accepted by the Governmental Unit, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Loan Agreement.

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer of Governmental Unit

Title: \_\_\_\_\_  
Print Name and Title

CITY OF GALLUP, NEW MEXICO  
ORDINANCE NO. S2020-7

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF GALLUP, NEW MEXICO (THE “GOVERNMENTAL UNIT”) AND THE NEW MEXICO FINANCE AUTHORITY (THE “FINANCE AUTHORITY”), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF UP TO \$7,500,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING THE COST OF REFUNDING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT’S OUTSTANDING GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2010A; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF THE REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978 (THE “STATE-SHARED GROSS RECEIPTS TAX”); PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO MAKE CERTAIN DETERMINATIONS CONCERNING THE TERMS OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

Capitalized terms used in the following recitals have the same meaning as defined in Section 1 of this Ordinance unless the context requires otherwise.

WHEREAS, the Governmental Unit is a legally and regularly created, established, organized and existing municipality under the general laws of the State; and

WHEREAS, the Governing Body has determined and hereby determines that the Project may be financed with amounts borrowed under the Loan Agreement and that it is in the best interest of the Governmental Unit and its residents that the Loan Agreement and Intercept Agreement be executed and delivered and that the financing of the Project take place by executing and delivering the Loan Agreement; and

WHEREAS, the Governmental Unit may use the Pledged Revenues to finance the Project and the Project will provide for the public health, peace and safety of the Governmental Unit and its citizens; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, as amended, the Governmental Unit now receives monthly from the Distributing State Agency from the gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA, 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA, 1978 (currently 5.125%), times the net receipts (i.e., the total gross receipts tax from business locations within the Governmental Unit and other places designated in Section 7-1-6.4, NMSA 1978, which provides for the Pledged Revenues; and

WHEREAS, the Governing Body has determined that it may lawfully pledge the Pledged Revenues for the payment of amounts due under the Loan Agreement; and

WHEREAS, except as described in the Term Sheet, the Pledged Revenues have not heretofore been pledged to secure the payment of any obligation which is currently outstanding; and

WHEREAS, the Loan Agreement shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues and shall not constitute a general obligation of the Governmental Unit, or a debt or pledge of the faith and credit of the Governmental Unit or the State; and

WHEREAS, the Governmental Unit desires to provide that distributions of the Pledged Revenues be redirected to the Finance Authority or its assigns pursuant to the Intercept Agreement between the Governmental Unit and the Finance Authority (the "Intercept Agreement") for the payment of amounts due under the Loan Agreement; and

WHEREAS, the Loan Agreement shall be executed and delivered pursuant to Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, and with an irrevocable first lien, but not necessarily an exclusive first lien, on the Pledged Revenues; and

WHEREAS, the Governing Body intends by this Ordinance to authorize the execution and delivery of the Loan Agreement in the amounts and for the purposes set forth herein; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the City Clerk this Ordinance and the forms of the Loan Agreement and Intercept Agreement, which are incorporated by reference and considered to be a part hereof; and

WHEREAS, the Governing Body hereby determines that the Project to be financed with the Loan is to be used for governmental purposes of the Governmental Unit and will not be used for purposes which would cause the Loan Agreement to be deemed a "private activity bond" as defined by the Internal Revenue Code of 1986, as amended; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use and pledge of the Pledged Revenues to the Finance Authority (or its assigns) for the payment of amounts due under the Loan Agreement, (ii) the use of the proceeds of the Loan Agreement to finance the Project, and (iii) the authorization, execution and delivery of the Loan Agreement and Intercept Agreement which are required to have been obtained by the date of this Ordinance, have been obtained or are reasonably expected to be obtained.

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

Section 1. Definitions. As used in the Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Act” means the general laws of the State, including Sections 3-31-1 through 3-31-12, NMSA 1978, as amended, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended and Sections 7-1-6.4, 7-1-6.15 and 7-9-4, NMSA 1978, as amended, and enactments of the Governing Body relating to the Loan Agreement and the Intercept Agreement, including this Ordinance.

“Aggregate Annual Debt Service Requirement” means the total principal and interest payments due and payable pursuant to the Loan Agreement and on all Parity Obligations secured by a pledge of any of the Pledged Revenues for any one Fiscal Year.

“Authorized Officers” means the Mayor, City Manager, and Chief Financial Officer of the Governmental Unit.

“Bonds” means public project revolving fund revenue bonds, if any, issued hereafter by the Finance Authority to fund or reimburse the Loan Agreement.

“Closing Date” means the date of execution, delivery and funding of the Loan Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and the applicable regulations thereunder.

“Completion Date” means the date of final payment of the cost of the Project.

“Distributing State Agency” means the department or agency of the State, as described on the Term Sheet, authorized to distribute the Pledged Revenues on behalf of the Governmental Unit.

“Expenses” means the cost of execution of the Loan Agreement and the costs of issuance of the Bonds, if any, and the periodic and regular fees and expenses incurred by the Finance Authority and the Trustee in administering the Loan Agreement, including legal fees.

“Finance Authority” means the New Mexico Finance Authority.

“Finance Authority Debt Service Account” means the debt service account in the name of the Governmental Unit established under the Indenture and held by the Finance Authority to pay principal and interest on the Loan Agreement as the same become due.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the Governmental Unit as its fiscal year.

“Governing Body” means the City Council of the Governmental Unit, or any future successor governing body of the Governmental Unit.

“Governmental Unit” means the City of Gallup, New Mexico.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the entire Ordinance and not solely to the particular section or paragraph of the Ordinance in which such word is used.

“Indenture” means the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Finance Authority and the Trustee, or the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Finance Authority and the Trustee, as determined by the Finance Authority pursuant to a Pledge Notification or Supplemental Indenture (as defined in the Indenture).

“Intercept Agreement” means the Intercept Agreement dated the Closing Date between the Governmental Unit and Finance Authority providing for the direct payment by the Distributing State Agency to the Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest due on the Loan Agreement, and any amendments or supplements to the Intercept Agreement.

“Loan” means the funds to be loaned to the Governmental Unit by the Finance Authority pursuant to the Loan Agreement.

“Loan Agreement” means the Loan Agreement dated the Closing Date between the Finance Authority and the Governmental Unit which provide for the financing of the Project and require payments by or on behalf of the Governmental Unit to the Finance Authority and/or the Trustee and any amendments or supplements thereto, and including the exhibits attached to the Loan Agreement.

“Loan Agreement Principal Amount” means the original principal amount of the Loan Agreement as shown on the Term Sheet.

“Loan Agreement Reserve Account” means the loan agreement reserve account established in the name of the Governmental Unit under the Indenture for the Loan funded by the Governmental Unit pursuant to the terms of the Loan Agreement and administered by the Trustee pursuant to the Indenture. The Loan Agreement Reserve Account is to be funded only upon the circumstances provides in Section 5.2(c) of the Loan Agreement.

“Loan Agreement Reserve Requirement” means the amount shown as the Loan Agreement Reserve Account deposit on the Term Sheet which amount does not exceed the least of: (i) ten percent (10%) of the Loan Agreement Principal Amount; (ii) one hundred twenty-five percent (125%) of the average annual principal and interest requirements for each Loan under the Loan Agreement; or (iii) the maximum annual principal and interest requirements for each Loan under the Loan Agreement. The Loan Agreement Reserve Requirement, if any, shall be calculated every year on or about June 1.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 compilation, as amended and supplemented.

“Ordinance” means this Ordinance No. \_\_\_\_\_ as adopted by the Governing Body on July 28, 2020, approving the Loan Agreement and pledging the Pledged Revenues to the payment of the Loan Agreement, as amended from time to time.

“Parity Obligations” means the Loan Agreement and any other obligations, now or hereafter issued or incurred, payable from or secured by a lien or pledge of the Pledged Revenues and issued with a lien on the Pledged Revenues on parity with the Loan Agreement, including those obligations described on the Term Sheet, if any.

“Pledged Revenues” means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4, NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Distributing State Agency to the Governmental Unit as authorized by Sections 7-1-6.1 and 7-1-6.4, NMSA 1978, and which remittances as of the date of adoption of this Ordinance are equal to one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported to the Governmental Unit for the month for which such remittance is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the Governmental Unit under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the Governmental Unit as set forth above, or (ii) the maximum amount at any time provided hereinafter to be remitted to the Governmental Unit under applicable law; and provided further, the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Ordinance.

“Pricing Certificate” means one or more certificates executed by the Mayor and/or City Manager, pursuant to and as authorized by Section 6-14-10.2, NMSA 1978, setting forth the final terms of the Loan.

“Program Account” means the account in the name of the Governmental Unit established pursuant to the Indenture and held by the Trustee for the deposit of the net proceeds of the Loan Agreement for disbursement to the Governmental Unit for payment of the costs of the Project.

“Project” means refunding, paying and discharging the Governmental Unit’s outstanding Gross Receipts Tax Improvement Revenue Bonds, Series 2010A and paying Expenses, as described in the Term Sheet.

“State” means the State of New Mexico.

“Term Sheet” mean Exhibit “A” to each Loan Agreement.

“Trustee” means BOKF, NA, or any successor trustee company, national or state banking association or financial institution at the time appointed Trustee by the Finance Authority.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Ordinance) by the Governing Body and officers of the Governmental Unit directed toward

the Project and the execution and delivery of the Loan Agreement and the Intercept Agreement be, and the same hereby are, ratified, approved and confirmed.

Section 3. Authorization of the Project, the Loan Agreement, and the Intercept Agreement. The Project and the method of financing the Project through execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized and ordered. The Project is for the benefit of the Governmental Unit.

Section 4. Findings. The Governmental Unit hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to meet the needs of the Governmental Unit and its residents and the issuance, execution and delivery of the Loan Agreement is necessary and advisable.

B. Moneys available and on hand for the Project from all sources other than the Loan are not sufficient to defray the cost of the Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment of amounts due under the Loan Agreement.

D. It is economically feasible to defray, in whole or in part, the costs of the Project by the execution and delivery of the Loan Agreement.

E. The Project and the execution and delivery of the Loan Agreement and the Intercept Agreement pursuant to the Act to provide funds for the financing of the Project are necessary and in the interest of the public health, safety, and welfare of the residents of the Governmental Unit.

F. The Governmental Unit will finance the Project, in whole or in part, with the net proceeds of the Loan.

G. Other than as described in the Term Sheet, the Governmental Unit does not have any outstanding obligations payable from Pledged Revenues which it has incurred or will incur prior to the initial execution and delivery of the Loan Agreement and the Intercept Agreement.

H. The net effective interest rate on the Loan shall not exceed twelve percent (12.0%) per annum, which is the maximum rate permitted by State law.

Section 5. Loan Agreement and Intercept Agreement - Authorization and Detail.

A. Authorization. This Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Governing Body. For the purpose of protecting the public health, conserving the property, protecting the general welfare and prosperity of the residents of the Governmental Unit and completing the Project, it is hereby declared necessary that the Governmental Unit, pursuant to the Act, execute and deliver the Loan Agreement and the Intercept Agreement evidencing special, limited obligation of the Governmental Unit to pay a combined principal amount of up to \$7,500,000, plus interest, and the execution and delivery of the Loan Agreement and the Intercept Agreement are hereby authorized. The Governmental Unit shall use

the proceeds of the Loan to (i) finance the Project, (ii) make a deposit to the Finance Authority Debt Service Accounts, and (iii) pay Expenses.

B. Detail. The Loan Agreement and Intercept Agreement shall be in substantially the forms presented at the meeting of the Governing Body at which this Ordinance was adopted. The Loan shall be in the combined aggregate principal amount of up to \$7,500,000, shall be payable in installments of principal due on the dates designated in Exhibit "B" to the Loan Agreement and bear interest payable on the dates and at the rates designated in Exhibit "B" to the Loan Agreement, all as approved by the Pricing Certificate. The Loan shall be placed in a private sale at par and shall have a maximum term of fifty years. The underwriter's discount for the Loan shall not exceed 2% of the par amount of the Loan.

Section 6. Approval of Loan Agreement and Intercept Agreement. The forms of the Loan Agreement and the Intercept Agreement as presented at the meeting of the Governing Body at which this Ordinance was adopted are hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Loan Agreement and the Intercept Agreement with such changes, insertions and omissions as are consistent with this Ordinance and as may be approved by such individual Authorized Officers, and the City Clerk is hereby authorized to affix the seal of the Governmental Unit on the Loan Agreement and the Intercept Agreement and attest the same. The execution of the Loan Agreement and the Intercept Agreement by an Authorized Officer shall be conclusive evidence of such approval.

Section 7. Special Limited Obligation. The Loan Agreement shall be secured by the pledge of the Pledged Revenues as set forth in the Loan Agreement and shall be payable solely from the Pledged Revenues. The Loan Agreement, together with interest thereon and other obligations of the Governmental Unit thereunder, shall be a special, limited obligation of the Governmental Unit, payable solely from the Pledged Revenues as provided in this Ordinance and the Loan Agreement and shall not constitute a general obligation of the Governmental Unit or the State, and the holders of the Loan Agreement may not look to any general or other fund of the Governmental Unit for payment of the obligations thereunder. Nothing contained in this Ordinance or in the Loan Agreement, or any other instruments, shall be construed as obligating the Governmental Unit (except with respect to the application of the Pledged Revenues) as incurring a pecuniary liability or a charge upon the general credit of the Governmental Unit or against its taxing power, nor shall a breach of any agreement contained in this Ordinance, the Loan Agreement, or any other instrument impose any pecuniary liability upon the Governmental Unit or any charge upon its general credit or against its taxing power. The Loan Agreement shall never constitute an indebtedness of the Governmental Unit within the meaning of any State constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the Governmental Unit or a charge against its general credit or taxing power. Nothing herein shall prevent the Governmental Unit from applying other funds of the Governmental Unit legally available therefor to payments required by the Loan Agreement, in its sole and absolute discretion.

Section 8. Disposition of Proceeds: Completion of the Project.

A. Program Account, Loan Agreement Reserve Account and Finance Authority Debt Service Account. The Governmental Unit hereby consents to creation of the Finance Authority Debt Service Account to be held and maintained by the Finance Authority and to the Program Account and Loan Agreement Reserve Account to be held and maintained by the Trustee

pursuant to the Indenture, each in connection with the Loan. The Governmental Unit hereby approves: (i) the deposit of a portion of the proceeds of each Loan Agreement in the Program Account and the respective Finance Authority Debt Service Account, all as set forth in the Term Sheet.

The proceeds derived from the execution and delivery of the Loan Agreement shall be deposited promptly upon the receipt thereof in the Finance Authority Debt Service Account and the Program Account, all as provided in the Loan Agreement and the Indenture.

Until the Completion Date, the money in the Program Account shall be used and paid out solely for the Project in compliance with applicable law and the provisions of the Loan Agreement and the Indenture.

The Governmental Unit will complete the Project with all due diligence.

B. Completion of the Project. Upon the Completion Date, the Governmental Unit shall execute and send to the Finance Authority a certificate stating that payment for the Project has been completed. As soon as practicable after the Completion Date, and, in any event, not more than sixty (60) days from the Completion Date, any balance remaining in the Program Account shall be transferred and deposited into the Finance Authority Debt Service Account, as provided in the Loan Agreement and the Indenture.

C. Finance Authority and Trustee Not Responsible. The Finance Authority and the Trustee shall in no manner be responsible for the application or disposal by the Governmental Unit or by its officers of the funds derived from the Loan Agreement or of any other funds herein designated.

Section 9. Deposit of Pledged Revenues, Distributions of the Pledged Revenues and Flow of Funds.

A. Deposit of Pledged Revenues. Pursuant to the Intercept Agreement, the Pledged Revenues shall be paid directly by the Distributing State Agency to the Finance Authority for deposit in the Finance Authority Debt Service Account and remittance to the Trustee in an amount sufficient to pay principal, interest, premium, if any, and other amounts due under the Loan Agreement.

B. Termination on Deposits to Maturity. No payment shall be made into the Finance Authority Debt Service Account for a Loan if the amount in the Finance Authority Debt Service Account with respect to that Loan totals a sum at least equal to the entire aggregate amount to become due as to principal and interest on, and any other amounts due under, the Loan Agreement in which case moneys in such account in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in such accounts shall be transferred to the Governmental Unit and used as provided below.

C. Use of Surplus Revenues. After making all the payments hereinabove required to be made by this Section, any moneys remaining in the Finance Authority Debt Service Account shall be transferred to the Governmental Unit on a timely basis and shall be applied to any

other lawful purpose, including, but not limited to, the payment of any Parity Obligations or bonds or obligations subordinate and junior to the Loan Agreement, or other purposes authorized by the Governmental Unit, the Constitution and laws of the State, as the Governmental Unit may from time to time determine.

Section 10. Lien on Pledged Revenues. Pursuant to this Ordinance and the Loan Agreement, the Pledged Revenues are hereby authorized to be pledged to, and are hereby pledged, and the Governmental Unit grants a security interest therein for, the payment of the principal, interest, and any other amounts due under the Loan Agreement subject to the uses thereof permitted by and the priorities set forth in this Ordinance. The Loan Agreement constitute an irrevocable and first lien, but not necessarily an exclusive first lien, on the Pledged Revenues with the lien thereon of the Parity Obligations as set forth herein and in the Loan Agreement. The Governmental Unit shall not create a lien on the Pledged Revenues superior to that of the Loan Agreement.

Section 11. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Ordinance, the Loan Agreement, the Intercept Agreement and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Ordinance, the Loan Agreement and the Intercept Agreement for the full, punctual and complete performance of all the terms, covenants and Agreement contained in this Ordinance, the Loan Agreement and the Intercept Agreement, including but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Loan Agreement and the Intercept Agreement, and the publication of the summary of this Ordinance set out in Section 17 of this Ordinance (with such changes, additions and deletions as may be necessary). Pursuant to Section 6-14-10.2, NMSA 1978, the Mayor and/or City Manager are each individually hereby delegated authority to execute the Pricing Certificate, and to determine any or all of the final terms of the Loan Agreement, subject to the parameters and conditions contained in this Ordinance. The Mayor or the City Manager shall present the Pricing Certificate to the Governing Body in a timely manner, before or after delivery of the Loan Agreement, at a regularly scheduled public meeting of the Governing Body.

Section 12. Amendment of Ordinance. Prior to the date of the initial delivery of the Loan Agreement to Finance Authority, the provisions of this Ordinance may be supplemented or amended by ordinance or resolution of the Governing Body with respect to any changes which are not inconsistent with the substantive provisions of this Ordinance. This Ordinance may be amended by ordinance of the Governing Body without receipt by the Governmental Unit of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 13. Ordinance Irrepealable. After the Loan Agreement and Intercept Agreement have been executed and delivered, this Ordinance shall be and remain irrepealable until all obligations due under the Loan Agreement shall be fully paid, canceled and discharged, as provided therein.

Section 14. Severability Clause. If any section, paragraph, clause or provision of this Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

Section 15. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 16. Effective Date. Upon due adoption of this Ordinance, it shall be recorded in the book of the Governmental Unit kept for that purpose, authenticated by the signatures of the Mayor and the City Clerk of the Governmental Unit, and the title and general summary of the subject matter contained in this Ordinance (set out in Section 17 below) shall be published in a newspaper which maintains an office and is of general circulation in the Governmental Unit, or posted in accordance with law, and such Ordinance shall be in full force and effect thereafter, in accordance with law.

Section 17. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Gallup, New Mexico  
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in Ordinance No. \_\_\_ duly adopted and approved by the City Council of the City of Gallup, New Mexico, on July 28, 2020. A complete copy of the Ordinance is available for public inspection during the normal and regular business hours of the City Clerk, 110 West Aztec Avenue, Gallup, New Mexico.

The title of the Ordinance is:

CITY OF GALLUP, NEW MEXICO  
ORDINANCE NO. \_\_\_

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOAN AGREEMENT AND INTERCEPT AGREEMENT BY AND BETWEEN THE CITY OF GALLUP, NEW MEXICO (THE "GOVERNMENTAL UNIT") AND THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), EVIDENCING A SPECIAL, LIMITED OBLIGATION OF THE GOVERNMENTAL UNIT TO PAY A PRINCIPAL AMOUNT OF UP TO \$7,500,000, TOGETHER WITH INTEREST THEREON, FOR THE PURPOSE OF FINANCING THE COST OF REFUNDING, PAYING AND DISCHARGING THE GOVERNMENTAL UNIT'S OUTSTANDING GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2010A; PROVIDING FOR THE PAYMENT OF THE PRINCIPAL AND INTEREST DUE UNDER THE LOAN AGREEMENT SOLELY FROM THE DISTRIBUTIONS OF THE REVENUES RECEIVED BY THE GOVERNMENTAL UNIT PURSUANT TO SECTION 7-1-6.4, NMSA 1978 (THE "STATE-SHARED GROSS RECEIPTS TAX");

PROVIDING FOR THE DISTRIBUTIONS OF THE REVENUES OF THE STATE-SHARED GROSS RECEIPTS TAX FROM THE STATE TAXATION AND REVENUE DEPARTMENT TO BE REDIRECTED TO THE FINANCE AUTHORITY OR ITS ASSIGNS PURSUANT TO THE INTERCEPT AGREEMENT FOR THE PAYMENT OF PRINCIPAL AND INTEREST DUE ON THE LOAN AGREEMENT; DELEGATING AUTHORITY TO MAKE CERTAIN DETERMINATIONS CONCERNING THE TERMS OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS ORDINANCE; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE LOAN AGREEMENT AND THE INTERCEPT AGREEMENT.

A summary of the subject matter of the Ordinance is contained in its title. This notice constitutes compliance with Section 6-14-6, NMSA 1978.

(End of Form of Summary for Publication)

PASSED, APPROVED AND ADOPTED THIS 28<sup>th</sup> DAY OF JULY, 2020.

CITY OF GALLUP, NEW MEXICO

ATTEST:

\_\_\_\_\_  
Mayor

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

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into September 4, 2020, by and between the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the “State”) under the laws of the State and the CITY OF GALLUP, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the “Governmental Unit”).

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing and refunding the cost of public projects of participating qualified entities, including the Governmental Unit, such as street improvement projects; and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, and Sections 3-31-1 through 3-31-12, NMSA 1978, as amended (collectively, the “Act”), the Finance Authority and the Governmental Unit are authorized to enter into agreements to facilitate the financing of the Project as described in the Loan Agreement by and between the Finance Authority and the Governmental Unit of even date herewith (the “Loan Agreement”); and

WHEREAS, the Governmental Unit desires to finance the Project and such financing is permitted under the Act; and

WHEREAS, the Finance Authority has established its Loan Program (the “Program”) funded by its public project revolving fund (as defined in the Act) for the financing of infrastructure and equipment projects upon the execution of the Loan Agreement and the assignment of loan agreements to a trustee (the “Trustee”); and

WHEREAS, the Governmental Unit desires to borrow \$7,500,000 from the Program for the purpose of financing the Project, which Loan is to be governed by this Intercept Agreement and by the Loan Agreement; and

WHEREAS, the Act confers upon the Finance Authority the authority to loan funds to the Governmental Unit to finance the Project, and Section 7-1-6.15, NMSA 1978, as amended, authorizes the Governmental Unit to direct that its distribution of State-Shared Gross Receipts Tax Revenues (the “Pledged Revenues”) from State Taxation and Revenue Department (the “Distributing State Agency”) be paid to the Finance Authority or its assignee, to secure payments under the Loan Agreement;

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Loan Agreement and the Indenture, as defined in the Loan Agreement.

Section 1. Authorization to the Finance Authority. The Governmental Unit hereby recognizes that the Finance Authority has made a Loan to the Governmental Unit in the amount of \$7,500,000 to finance the Project. Pursuant to the Loan Agreement and this Intercept Agreement, the Loan and all Loan Agreement Payments on the Loan made by or on behalf of the Governmental Unit shall be collected by the Finance Authority and remitted to the Trustee. All payments due on the Loan from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the Governmental Unit, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the Governmental Unit to the Distributing State Agency to pay to the Finance Authority, on behalf of the Governmental Unit, sums shown on the Intercept Schedule from distributions of the Pledged Revenues pursuant to Section 7-1-6.15, NMSA 1978, as amended, to insure compliance with the Loan Agreement and repayment of the Loan. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Loan Agreement Reserve Account, if any, established for the Governmental Unit. Any accumulation of the Pledged Revenues in an amount in excess of the next Loan Agreement Payment and the Loan Agreement Reserve Requirement, if any, shall be redirected by the Finance Authority to the benefit of the Governmental Unit on a timely basis as provided in Section 5.2 of the Loan Agreement.

To the extent applicable and to the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Loan and other Parity Obligations (as defined in the Loan Agreement) now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be applied to allow partial payment on a pro-rata basis of the debt service due and owing on the Loan Agreement and other Parity Obligations.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Loan made pursuant to the Loan Agreement and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the Governmental Unit from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the Governmental Unit may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by Ordinance No. \_\_\_\_\_, passed and adopted on July 28, 2020 by the Governing Body of the Governmental Unit, which Resolution is in full force and effect on the date hereof.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts. This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The Governmental Unit agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the Loan to the Governmental Unit.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Loan.

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the first distribution of the Pledged Revenues that is to be intercepted by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the Governmental Unit distributed in \_\_\_\_\_, 2020.

Section 9. Final Intercept Date. Once the Loan has been fully paid off and satisfied, Finance Authority shall provide written notice to the Distributing State Agency to discontinue the interception of the Governmental Unit's Pledged Revenues.

[Remainder of page left intentionally blank]

[Signature page follows]

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By \_\_\_\_\_  
Marquita D. Russel, Chief Executive Officer

CITY OF GALLUP, NEW MEXICO

By \_\_\_\_\_  
Mayor

(SEAL)

Attest:

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

Acknowledged:

By \_\_\_\_\_  
\_\_\_\_\_, Taxation and Revenue Department

Date \_\_\_\_\_

EXHIBIT "A"

INTERCEPT SCHEDULE  
CITY OF GALLUP, NEW MEXICO  
PPRF-5253

Payment Dates	Pledged Revenues	Amount
Monthly as follows: _____, 2020 through _____	State gross receipts tax derived pursuant to Section 7-9-4, NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted monthly by the Distributing State Agency to the Governmental Unit as authorized by Sections 7-1-6.1 and 7-1-6.4, NMSA 1978, and which remittances are equal to one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported to the Governmental Unit for the month for which such remittance is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the Governmental Unit under applicable law, such additional amounts shall be included as revenues pledged; and provided further that the amount of revenues pledged shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the Governmental Unit as set forth above, or (ii) the maximum amount at any time provided hereinafter to be remitted to the Governmental Unit under applicable law; and provided further, the Governmental Unit intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged.	\$ _____

**CITY OF GALLUP  
RESOLUTION NO. R2020-24**

**A RESOLUTION AMENDING THE FISCAL YEAR 2020 BUDGET FOR CERTAIN FUNDS, APPROVING THE YEAR TO DATE REPORT OF ACTUALS AND APPLICATION TO THE LOCAL GOVERNMENT DIVISION OF THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION FOR THE APPROVAL THEREOF:**

**WHEREAS**, the Governing Body in and for the City of Gallup, State of New Mexico has amended the budget for Fiscal Year 2020 (July 1, 2019 through June 30, 2020); and

**WHEREAS**, said budget amendment was developed on the basis of need and through cooperation with all user departments, elected officials and other department supervisors; and

**WHEREAS**, to perform essential and necessary services for the citizens of the City of Gallup, certain transfers of funds for personnel, operations and capital outlay expenditures are necessary; and

**WHEREAS**, the DFA YTD report of actual activity has been prepared showing summary data by fund; and

**WHEREAS**, the official meeting for the review of said documents were duly advertised on July 24, 2020, in compliance with the State Open Meetings act; and

**WHEREAS**, it is the majority opinion of this Council that the proposed budget adjustment meets the requirements as currently determined for the close of the fourth quarter of FY 2020.

**NOW THEREFORE, BE IT HEREBY RESOLVED** that the Governing Body of the City of Gallup, State of New Mexico hereby adopts the budget amendment herein above described and respectfully requests approval from the Local Government Division of the Department of Finance and Administration.

**RESOLVED:** In session this 28th day of July, 2020.

**CITY OF GALLUP, NEW MEXICO**

**ATTEST:**

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

\_\_\_\_\_  
Louis Bonaguidi, Mayor

\_\_\_\_\_  
Linda Garcia, City Councilor

\_\_\_\_\_  
Michael Schaaf, City Councilor

\_\_\_\_\_  
Yogash Kumar, City Councilor

\_\_\_\_\_  
Fran Palochak, City Councilor

**State of New Mexico**  
**Local Government Budget Management System (LGBMS)**

**Report Recap - Fiscal Year 2019-2020 - Gallup (City) - FY2020 Q4**

Printed from LGBMS on 2020-07-23 08:14:29

Fund	Cash	Investments	Revenues	Transfers	Expenditures	Adjustments	Balance	Reserves	Adjusted Balance
11000 General Operating Fund	2,589,088.00	10,062,213.51	28,858,915.04	-997,440.42	25,213,428.89	2,155,805.41	17,455,152.65	2,101,119.07	15,354,033.58
20100 Corrections	534,444.00	0.00	74,418.01	0.00	42,534.00	-0.87	566,327.14	0.00	566,327.14
20200 Environmental	1,439,725.00	7,576,405.93	1,811,936.06	-75,350.00	2,600,871.30	-242,248.36	7,909,597.33	0.00	7,909,597.33
20600 Emergency Medical Services	1.00	0.00	19,043.28	0.00	19,008.78	-0.42	35.08	0.00	35.08
20900 Fire Protection	518,140.00	0.00	586,882.83	-141,259.00	337,792.58	23,111.32	649,082.57	0.00	649,082.57
21100 Law Enforcement Protection	387.00	0.00	67,200.00	708,546.00	759,366.36	17.65	16,784.29	0.00	16,784.29
21400 Lodgers' Tax	319,111.00	949,467.62	1,424,727.93	0.00	1,345,031.43	-16,870.48	1,331,404.64	0.00	1,331,404.64
21600 Municipal Street	1,024,138.00	124,302.75	2,431,733.72	1,197,217.00	2,118,719.97	-2,222.32	2,656,449.18	0.00	2,656,449.18
21800 Intergovernmental Grants	1,506.00	0.00	245,506.03	-75,185.00	185,110.90	33,941.68	20,657.81	0.00	20,657.81
21900 Senior Citizens	201,706.00	0.00	332,544.57	240,430.00	609,427.09	244.49	165,497.97	0.00	165,497.97
29900 Other Special Revenue	12,250,433.00	2,979,184.58	5,925,502.12	1,000,001.00	3,436,046.05	-98,910.21	18,620,164.44	0.00	18,620,164.44
30100 Bond Proceeds Project	1,663,011.00	0.00	14,172.16	0.00	1,217,039.29	-40,001.15	420,142.72	0.00	420,142.72
30300 State Legislative Appropriation Project	1,127.00	0.00	1,531,520.77	52,698.00	2,228,990.80	678,048.58	34,403.55	0.00	34,403.55
30500 Gross Receipts Tax Proceeds Project	891,036.00	1,776,913.22	2,141,317.55	-1,859,363.00	1,445,717.26	457,011.19	1,961,197.70	0.00	1,961,197.70
30900 Other Federal Funded Projects	238,254.00	0.00	0.00	0.00	0.00	-0.20	238,253.80	0.00	238,253.80
39900 Other Capital Projects	8,609,177.00	7,380,157.48	4,780,696.00	13,917,121.72	10,040,778.55	-688,479.45	23,957,894.20	0.00	23,957,894.20
40100 General Obligation Bond Debt Service	695,708.00	0.00	485,235.03	0.00	667,378.11	-0.82	513,564.10	0.00	513,564.10
40200 GRT Revenue Bond Debt Service	683,261.00	150,707.74	3,359.74	3,912,490.00	3,912,488.76	-3,360.45	833,969.27	0.00	833,969.27

40400 NMFA Loan Debt Service	362,993.00	476,518.91	61,984.17	-2,453,921.00	532,586.29	2,934,051.33	849,040.12	0.00	849,040.12
49900 Other Debt Service	2,493,379.00	0.00	0.00	-2,501,294.30	0.00	106,642.30	98,727.00	0.00	98,727.00
50100 Water Enterprise	6,141,734.00	5,383,686.22	7,451,282.73	-4,899,979.00	3,005,032.05	-1,960,340.04	9,111,351.86	0.00	9,111,351.86
50200 Solid Waste Enterprise	121,827.00	2,468,796.25	3,683,450.49	-306,000.00	2,577,505.71	-34,866.91	3,355,701.12	0.00	3,355,701.12
50300 Wastewater/Sewer Enterprise	987,365.00	1,752,315.73	4,172,167.10	-1,735,902.00	2,755,165.30	37,729.85	2,458,510.38	0.00	2,458,510.38
50400 Airport Enterprise	378,119.00	0.00	308,295.49	82,207.00	359,833.52	1,158.74	409,946.71	0.00	409,946.71
51400 Electric Utility	2,190,317.00	16,389,253.24	24,599,923.99	-5,965,115.00	19,372,107.34	2,265,726.64	20,107,998.53	0.00	20,107,998.53
52100 Joint Utility	215,720.00	0.00	427,801.46	0.00	492,140.72	34,768.69	186,149.43	0.00	186,149.43
59900 Other Enterprise	1,005,267.00	0.00	196,841.33	0.00	642,128.70	-944.45	559,035.18	0.00	559,035.18
69900 Other Internal Service	316,221.00	1,714,171.33	3,052,270.47	-99,902.00	2,752,655.48	-230,105.32	2,000,000.00	0.00	2,000,000.00
79900 Other Trust & Agency	271,592.00	0.00	0.00	0.00	0.00	-9,688.29	261,903.71	0.00	261,903.71
<b>Totals</b>	<b>46,144,787.00</b>	<b>59,184,094.51</b>	<b>94,688,728.07</b>	<b>0.00</b>	<b>88,668,885.23</b>	<b>5,400,218.13</b>	<b>116,748,942.48</b>	<b>2,101,119.07</b>	<b>114,647,823.41</b>

				Revenue	Transfer In	Expense	Transfer Out	Increase or (Decrease)	Purpose
<b>General Fund</b>									
20-127	101	1025	Special Activites				1,067,000	1,067,000	Transfer funds from Fund 101 to Fund 399. CC Mtg 5/18/20 Item 1 Coal Ave Commons Const
20-127	101	1025	Special Activites				160,000	160,000	20% of \$800,000 from State Mainstreet funding. Coal Ave Commons Const
20-130	101	1025	Special Activites			-80,275		-80,275	Close projects
20-131	101	1025	Special Activites			-251,374		-251,374	Close projects
20-130	101	1531	Planning			-991		-991	Close project
20-124	101	1532	Engineering			26,200		26,200	Budget for Park Ave & NM 602 Traffic Impact Analysis. CC Mtg 3/10/20 Item 5
20-130	101	1532	Engineering			-4,932		-4,932	Close project
20-136	101	2011	Police			-23,451		-23,451	Transfer from Fund 101 to Fund 211. Cover negative balance in fuel charges.
20-136	101	2011	Police				23,451	23,451	Transfer from Fund 101 to Fund 211. Cover negative balance in fuel charges.
20-130	101	3054	YCC			-2,969		-2,969	Close project
20-130	101	3550	Red Rock Park			-20,000		-20,000	Close project
	General Fund Adj			0	0	-357,792	1,250,451	892,659	
<b>Other Funds</b>									
20-133	202	1525	Environmental Surcharge			-90,633		-90,633	Close project
20-058	202	1525	Environmental Surcharge			-316,944		-316,944	Reverse group 4756 Double entry see BA 20-006 Period 1
20-136	211	0000	Police		23,451			-23,451	Transfer from Fund 101 to Fund 211. Cover negative balance in fuel charges.
20-136	211	0000	Police			23,451		23,451	Transfer from Fund 101 to Fund 211. Cover negative balance in fuel charges.
20-120	211	2011	Police			2,698		2,698	Reverse group 4290 Temporary Budget Adjustment
20-058	216	0000	Streets	-950,833				950,833	Reverse group 4755 Double entry see BA 20-006 Period 1
20-058	216	1534	Streets			-950,833		-950,833	Reverse group 4755 Double entry see BA 20-006 Period 1
20-126	216	1534	Streets			-316,944		-316,944	Correct double entry
20-141	218	2541	Fire			-25,185		-25,185	Transfer from Fund 218 to Fund 603. Close project
20-141	218	2541	Fire				25,185	25,185	Transfer from Fund 218 to Fund 603. Close project
20-141	218	2541	Fire			-10,197		-10,197	Close project
20-137	219	0000	Senior Citizens	25,578				-25,578	Budget set up for COVID-19 FFCRA subaward. CC Mtg 5/26/20 Item 8
20-137	219	3640	Senior Citizens			5,296		5,296	Budget set up for COVID-19 FFCRA subaward. CC Mtg 5/26/20 Item 8. Congregate Meals
20-137	219	3641	Senior Citizens			3,929		3,929	Budget set up for COVID-19 FFCRA subaward. CC Mtg 5/26/20 Item 8. Home Delivered Meals
20-137	219	3643	Senior Citizens			16,353		16,353	Budget set up for COVID-19 FFCRA subaward. CC Mtg 5/26/20 Item 8. Transportation
20-125	306	0000	Water	4,538,900				-4,538,900	Budget adjustment for a change order. CC Mtg 5/12/20 Item 4 & 5
20-135	306	0000	Water		9,470			-9,470	Transfer funds from Fund 506 to Fund 306. CC Mtg 6/9/20 Item 8.
20-125	306	6063	Water			4,538,900		4,538,900	Budget adjustment for a change order. CC Mtg 5/12/20 Item 4 & 5
20-135	306	6063	Water			9,470		9,470	Transfer funds from Fund 506 to Fund 306. CC Mtg 6/9/20 Item 8.
20-127	399	0000	Public Works		1,067,000			-1,067,000	Transfer funds from Fund 101 to Fund 399. CC Mtg 5/18/20 Item 1 Coal Ave Commons Const
20-127	399	0000	Public Works		160,000			-160,000	20% of \$800,000 from State Mainstreet funding. Coal Ave Commons Const
20-127	399	1530	Public Works			1,067,000		1,067,000	Transfer funds from Fund 101 to Fund 399. CC Mtg 5/18/20 Item 1 Coal Ave Commons Const
20-127	399	1530	Public Works			160,000		160,000	20% of \$800,000 from State Mainstreet funding. Coal Ave Commons Const
20-144	475	6061	Electric			41,937		41,937	Budget adjustment to correct a negative balance
20-128	498	1026	Debt Service			170,000		170,000	Cash increase for Bond payment. CC Mtg 5/26/20 Item 7
20-140	498	1026	Debt Service			4,914		4,914	Cash increase to cover interest payment on a Bond. CC Mtg 6/23/20 Item 4
20-142	505	6065	Enterprise-NGWSP			4,595		4,595	Budget adjustment to correct a negative balance
20-135	506	6063	Water				9,470	9,470	Transfer funds from Fund 506 to Fund 306. CC Mtg 6/9/20 Item 8.
20-121	507	6061	Electric			350,000		350,000	Cash increase for Expenses. CC Mtg 4/28/20 Item 8
20-122	508	6062	Wastewater			26,000		26,000	Cash increase for extended rental period of a vactor truck lease. CC Mtg 4/28/20 Item 9
20-134	508	6062	Wastewater			75,000		75,000	Cash increase for operations at the Wastewater Treatment Plant. CC Mtg 6/9/20 Item 9
20-138	590	1024	Rodeo			-28,087		-28,087	Close projects
20-139	592	1065	Gamerco Billing			20,000		20,000	Cash increase to cover Gamerco Billing for rest of FY2020
20-141	603	0000	Risk Management		25,185			-25,185	Transfer from Fund 218 to Fund 603. Close project
20-123	603	1016	Risk Management			150,000		150,000	Cash increase to cover current and future financial obligations. CC Mtg 4/28/20 Item 5
20-132	603	1016	Risk Management			-111,751		-111,751	
	Other Fund Adj			3,613,645	1,285,106	4,818,969	34,655	-45,127	
	Total Adjustments			3,613,645	1,285,106	4,461,177	1,285,106	847,532	

**State of New Mexico**  
**Local Government Budget Management System (LGBMS)**  
**Adjusted Budget (incl. pending adjustments) - Fiscal Year 2019-2020**  
**Gallup (City)**

Printed from LGBMS on 2020-07-23 14:19:48

<b>Fund</b>	<b>Cash</b>	<b>Investments</b>	<b>Revenues</b>	<b>Transfers</b>	<b>Expenditures</b>	<b>Balance</b>	<b>Reserves</b>	<b>Adjusted Balance</b>
11000 General Operating Fund	2,589,088.00	9,863,477.00	26,879,304.00	-997,441.00	29,458,178.00	8,876,250.00	2,454,848.18	6,421,401.82
20100 Corrections	534,444.00	0.00	122,200.00	0.00	75,000.00	581,644.00	0.00	581,644.00
20200 Environmental	1,439,725.00	7,310,290.00	1,791,164.00	-75,350.00	9,712,248.00	753,581.00	0.00	753,581.00
20600 Emergency Medical Services	1.00	0.00	19,043.00	0.00	19,043.00	1.00	0.00	1.00
20900 Fire Protection	518,140.00	0.00	591,503.00	-142,034.00	967,608.00	1.00	0.00	1.00
21100 Law Enforcement Protection	387.00	0.00	67,200.00	708,546.00	778,830.00	-2,697.00	0.00	-2,697.00
21400 Lodgers' Tax	319,111.00	932,634.00	1,504,500.00	-11,000.00	2,034,333.00	710,912.00	0.00	710,912.00
21600 Municipal Street	1,024,138.00	122,099.00	2,628,490.00	1,197,217.00	4,090,703.00	881,241.00	0.00	881,241.00
21800 Intergovernmental Grants	1,506.00	0.00	324,623.00	-75,185.00	190,889.00	60,055.00	0.00	60,055.00
21900 Senior Citizens	201,706.00	0.00	568,061.00	240,430.00	728,331.00	281,866.00	0.00	281,866.00
29900 Other Special Revenue	12,250,433.00	2,934,766.00	7,531,199.00	1,000,001.00	12,346,674.00	11,369,725.00	0.00	11,369,725.00
30100 Bond Proceeds Project	1,663,011.00	0.00	18,000.00	0.00	1,402,786.00	278,225.00	0.00	278,225.00
30300 State Legislative Appropriation Project	1,127.00	0.00	10,478,103.00	52,698.00	10,479,129.00	52,799.00	0.00	52,799.00
30500 Gross Receipts Tax Proceeds Project	891,036.00	2,233,926.00	1,983,000.00	-1,859,363.00	3,162,527.00	86,072.00	0.00	86,072.00
30900 Other Federal Funded Projects	238,254.00	0.00	9,341.00	0.00	44,928.00	202,667.00	0.00	202,667.00
39900 Other Capital Projects	8,609,177.00	6,679,584.00	13,119,325.00	13,917,123.00	38,261,771.00	4,063,438.00	0.00	4,063,438.00
40100 General Obligation Bond Debt Service	695,708.00	0.00	400,000.00	0.00	668,110.00	427,598.00	0.00	427,598.00

40200 GRT Revenue Bond Debt Service	683,261.00	147,348.00	0.00	3,912,490.00	3,912,489.00	830,610.00	0.00	830,610.00
40400 NMFA Loan Debt Service	362,993.00	468,071.00	2,942,500.00	-2,453,146.00	532,691.00	787,727.00	0.00	787,727.00
49900 Other Debt Service	2,493,379.00	0.00	7,916.00	-2,501,295.00	0.00	0.00	0.00	0.00
50100 Water Enterprise	6,141,734.00	3,228,581.00	6,937,000.00	-4,899,979.00	3,529,230.00	7,878,106.00	0.00	7,878,106.00
50200 Solid Waste Enterprise	121,827.00	2,390,471.00	3,600,000.00	-306,000.00	3,248,722.00	2,557,576.00	0.00	2,557,576.00
50300 Wastewater/Sewer Enterprise	987,365.00	1,721,248.00	3,730,000.00	-1,735,902.00	3,026,185.00	1,676,526.00	0.00	1,676,526.00
50400 Airport Enterprise	378,119.00	0.00	324,607.00	82,207.00	435,986.00	348,947.00	0.00	348,947.00
51400 Electric Utility	2,190,317.00	18,047,583.00	23,960,000.00	-5,965,115.00	21,935,999.00	16,296,786.00	0.00	16,296,786.00
52100 Joint Utility	215,720.00	0.00	488,000.00	0.00	508,000.00	195,720.00	0.00	195,720.00
59900 Other Enterprise	1,005,267.00	0.00	794,806.00	11,000.00	1,159,959.00	651,114.00	0.00	651,114.00
69900 Other Internal Service	316,221.00	1,683,780.00	2,677,988.00	-99,902.00	2,877,110.00	1,700,977.00	0.00	1,700,977.00
79900 Other Trust & Agency	271,592.00	0.00	0.00	0.00	0.00	271,592.00	0.00	271,592.00
<b>Totals</b>	<b>46,144,787.00</b>	<b>57,763,858.00</b>	<b>113,497,873.00</b>	<b>0.00</b>	<b>155,587,459.00</b>	<b>61,819,059.00</b>	<b>2,454,848.18</b>	<b>59,364,210.82</b>



July 20, 2020

**MEMORANDUM**

TO: Gallup City Council

FROM: Clyde (C.B.) Strain, Planning & Development Director

REF: Case No. 2020-00300005, request for final plat review and approval of the AVA, LLC, ABA Land LTD. Co. and Love's Travel Stops & Country Stores Inc., minor subdivision.

**BACKGROUND**

AVA, LLC, ABA Land LTD. Co. and Love's Travel Stops & Country Stores Inc., property owners, have petitioned the Gallup City Council for final plat review and approval of Replat No. 1 of Love Subdivision containing 4.908 acres M/L and a Replat of Unplatted Tracts of Land within a portion of the Ortega Annexation situated in the NE ¼ of Section 27 T15N, R19W and a portion of the Mentmore Meadows Annexation situated in the SE ¼ of Section 22 T15N, R19W, containing a total of 20.9461 acres. Said Subdivision includes the vacation of several existing, unoccupied public utility and access easements.

**DISCUSSION**

Currently the properties consist of four (4) unplatted tracts of land and one (1) platted lot. The purpose of this subdivision is to reconfigure the existing properties by replatting the existing tracts into three (3) individual lots. Two of the lots will contain existing development on them and one lot will remain vacant for potential future development. Also included in the subdivision is the vacation of several existing unoccupied public utility and access easements for City Council approval.

All proposed lots comply with the required dimensional requirements for the Heavy Commercial (HC) Zone District per Table 10-2-21 of the City of Gallup Land Development Standards. The property is also presently fully serviced with water/wastewater and electric infrastructure across the entire length of the property frontage therefore no additional infrastructure improvements are required at this time.

Copies of the City of Gallup Task Force comments are included in your agenda packets for your review.

## **FINDINGS**

It is the findings of staff that the proposed subdivision complies with the City of Gallup Subdivision Regulations for a minor subdivision including all dimensional requirements for the Heavy Commercial (HC) Zone District. Staff's recommendation is for approval of said subdivision.

The Gallup Planning and Zoning Commission approved said Subdivision during their regular meeting on July 8<sup>th</sup> 2020. The Gallup City Council is now being asked to approve the vacation of the identified public utility and access easements which will complete the subdivision approval process and allow recording of the final plat with the McKinley County Clerk.

February 13, 2020

**MEMORANDUM**

**TO: GALLUP TASK FORCE {GTF}**

- C.B. Strain, Community Planner
- Stan Henderson, Executive Director, Public Works Division
- Mike DeClercq, Water/Waste Water Superintendent
- Marita Joe, Senior Electrical Engineer
- Adrian Marrufo, Solid Waste Director
- Jacob La Croix, GFD, Fire Inspector
- Diane Willato, CenturyLink Engineer
- Irma Bustamante, NM Gas Co. Distribution Superintendent
- John Ortiz, Comcast Superintendent

**FROM:**   
Roman J. Herrera

Roman J. Herrera, Development Review Coordinator

**cc:** Dennis Romero, Water & Wastewater Executive Director  
John Wheeler, Electric Director

<b>CASE #:</b> MJSB 20-00200001
<b>PROJECT NAME:</b> Ortega Subdivision
<b>PROPERTY OWNER:</b> AVA, LLC & ABA Land LTD, CO
<b>PROJECT LOCATION:</b> North & northeast of 3360 & 3366 W. Hist. Hwy. 66 – aka; NE ¼ of Sec. 27, T15, R19, .098 acres; N/E ¼ of Section 27, T15, R19, 6.405 acres; SE ¼ of Section 22, T15, R19 5.2acres
<b>DESCRIPTION: MAJOR SUBDIVISION; SKETCH PLAT REVIEW:</b> The property owners are requesting that the aforementioned tracks of un-platted land be subdivided into two (2) parcels. The properties are presently zoned Heavy Commercial, no zone change is being requested.
<b>ELECTRONIC COMMENTS ARE DUE BY: 25 FEBRUARY 2020</b>

**A TASK FORCE MEETING WILL BE SCHEDULED AT A LATER DATE**

**COMMUNITY PLANNER COMMENTS:**

P1.) The Ortega Subdivision does not exist nor do Parcels 3, 4 and 6 therefore the Ortega Subdivision and Parcels 3, 4 and 6 cannot be referenced or replatted.

P2.) The original tract needs to be referenced as the tract being subdivided as well as the tract of land to the north.

P3.) Ok to schedule Task Force meeting to review comments.

**CITY ENGINEER:**

PW/City Engr comments:

1. Future development may require City and ADA compliant sidewalks on any improved street right-of-way.
2. Future development will require storm drainage plan and improvements.
3. Noted:
  - o Interstate 40 is shown south of the BNSF tracks?
  - o Parcel 6A may be landlocked with access via a private road.
  - o No location map.

**WATER DEPARTMENT COMMENTS:** Must provide 30' easement for water and sewer to all parcels. Must extend waterlines upon development. Water, sewer and electrical lines must maintain 10' separation.

**WASTEWATER DEPARTMENT COMMENTS:** Must provide 30' easement for water and sewer to all parcels. Must extend sewer lines upon development. Water, sewer and electrical lines must maintain 10' separation.

**ELECTRIC DEPARTMENT COMMENTS:** Electric did not submit comment.

**FIRE DEPARTMENT COMMENTS:** No issues with subdivision. Future construction may require installation of hydrant(s), a sprinkler system, and/or fire department apparatus access. Future code requirements will be construction dependent.

**SOLID WASTE COMMENTS:** No issues with subdivision.

**CENTURYLINK COMMENTS:** No comment from CenturyLink at this time.

**NM GAS COMPANY COMMENTS:** No comments were received from NM Gas.

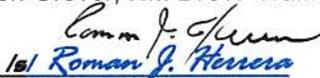
**COMCAST COMMENTS:** No comments were received from Comcast.

May 13, 2020

**MEMORANDUM**

**TO: GALLUP TASK FORCE {GTF}**

- C.B. Strain, Community Planner
- Stan Henderson, Executive Director, Public Works Division
- Mike DeClercq, Water/Waste Water Superintendent
- Marita Joe, Senior Electrical Engineer
- Adrian Marrufo, Solid Waste Director
- Jacob La Croix, GFD, Fire Inspector
- Diane Willato, CenturyLink Engineer
- Irma Bustamante, NM Gas Co. Distribution Superintendent
- John Ortiz, Comcast Superintendent
- Jayson Grover, NM D.O.T Traffic Engineer

**FROM:**  Roman J. Herrera

Roman J. Herrera, Development Review Coordinator

**cc:** Dennis Romero, Water & Wastewater Executive Director  
John Wheeler, Electric Director

<b>CASE #:</b> MJSB 20-00200001
<b>PROJECT NAME:</b> Ortega Subdivision
<b>PROPERTY OWNER:</b> AVA, LLC & ABA Land LTD, CO
<b>PROJECT LOCATION:</b> 3380, 3360 & 3366 W. Hist. Hwy. 66 – aka; SEC.27 T15N R19W, WITHIN THE NE1/4 OF A/K/A LOVE SUB. CONT. 4.908 ACS; NE ¼ of Sec. 27, T15, R19,.098 acres; N/E ¼ of Section 27, T15, R19, 6.405 acres; SE ¼ of Section 22, T15, R19 5.2acres
<b>DESCRIPTION: MAJOR SUBDIVISION; PRELIMINARY PLAT REVIEW:</b> This subdivision replat has changed & will now include the Loves property & a dedicated Public Right of Way, as follows; Lots 1, 2 & 3 & Dedicated Public Right of Way & Easements. The properties are presently zoned Heavy Commercial, no zone change is being requested. The request for replat will be presented to the Planning & Zoning Commission as soon as possible, any conditions for approval should be included in staff recommendation to the Commission.
<b>ELECTRONIC COMMENTS ARE DUE BY: 22 MAY 2020</b>

**A TASK FORCE MEETING HAS NOT BEEN SCHEDULED**

**COMMUNITY PLANNER COMMENTS:**

P1.) There is no “Pre-Final Plat” designation, we are at “Sketch Plat” for a Major Subdivision.

P2.) A cul-de-sac is required at the end of the dead end street per Section 12-1-C5c.

P3.) All vehicular, pedestrian and utility infrastructure is required to be installed per Section 11-1-Agi.

P4.) Plans for all required infrastructure improvements shall be submitted for review per Section 11-1-F4.

P5.) The existing shop is encroaching into the required setback on Ortega Circle and is encroaching into the ten foot (10') public utility and drainage easement. The proposed subdivision cannot create a non-conformance issue. The existing shop will need to be relocated or the lots within the proposed subdivision need to be reconfigured to eliminate any non-conformance issues.

P6.) Provide all required data on plats per the City of Gallup Subdivision Regulations.

P7.) If preliminary plat is approved by the Planning & Zoning Commission, construction of all required infrastructure can proceed. Once all required infrastructure is installed and accepted by the City the applicant can then apply for final plat approval by the Planning & Zoning Commission. Once approved the final plat can then be filed with the McKinley County Clerk and the subdivision is complete.

**CITY ENGINEER:**

6' wide ADA compliant sidewalks required on 66 frontage.

Service street will need to be a cul-de-sac with 5' wide ADA compliant sidewalks.

Compliance with NMDOT recommendations below.

**WATER DEPARTMENT COMMENTS:** Extend 6in water line north in right of way to cover access to Lot 2.

**WASTEWATER DEPARTMENT COMMENTS:** Extend 8in Sewer line north in right of way to cover Access to Lot 2, provide manhole at north end of line for Access.

**ELECTRIC DEPARTMENT COMMENTS:**

There are some recorded easements missing from the plat.  
Easement line correction on map needs to correspond the field staking.  
We sent pictures of staking and existing easement documentations to the surveyor.

**FIRE DEPARTMENT COMMENTS:** 2015 IFC Appendix D103.4 Dead ends. Dead-end fire apparatus access roads in excess of 150 feet (45 720 mm) shall be provided with width and turnaround provisions in accordance with Table D103.4.

All other future fire code requirements will be construction dependent

**SOLID WASTE COMMENTS:** No issues with replat

**CENTURYLINK COMMENTS:** No comments were received from CenturyLink.

**NM GAS COMPANY COMMENTS:** No comments were received from NM Gas.

**COMCAST COMMENTS:** No comments were received from Comcast.

**NM D.O.T:** As discussed in a past face to face meeting with City representatives and the property owner, comments from the NMDOT for the proposed subdivision of property are as follows.

- Any change in property use, ownership, and/or any further development that could potentially increase expected traffic generation to the property will require the property owners and/or the City of Gallup to re-apply for an NMDOT Driveway Permit. As a necessary part of this process, the re-evaluation of the appropriateness of current access locations and design will be required, which may end up resulting in the need to modify current access/driveway locations and design. This needs to be made very clear to the property owner/future owners and the City of Gallup.

- The attached proposed plat shows a single driveway/access to serve Lots 1 through 3. This is contrary to what currently exists as pictured below. Currently lot 3 is served by three (3) driveways. Is the property owner proposing to the City and to the NMDOT to remove two of the existing driveways as is shown in the proposed Final Plat?

- The proposed Final Plat shows Ortega Circle will be dedicated as Public Right of Way, thus making the City of Gallup responsible for obtaining an updated NMDOT Access Permit for its connection to NM 118 (as per NMAC Section 18.31.6). Attached is an NMDOT Access Permit Application. The City of Gallup needs to be aware that they will be responsible for completing the necessary Traffic Impact Analysis required to support their access permit, and any changes or improvements that the supporting TIA might identify as necessary. It is my suggestion that the City of Gallup have the property owner/developer complete the necessary traffic evaluation and access improvements BEFORE the City of Gallup accepts responsibility for Ortega Circle and its connection to NM 118 and approves the proposed property division.

June 16, 2020

**MEMORANDUM**

**TO: GALLUP TASK FORCE {GTF}**

- C.B. Strain, Community Planner
- Stan Henderson, Executive Director, Public Works Division
- Mike DeClercq, Water/Waste Water Superintendent
- Marita Joe, Senior Electrical Engineer
- Adrian Marrufo, Solid Waste Director
- Jacob LaCroix, GFD, Fire Inspector
- Dianne Willato, CenturyLink Engineer
- Irma Bustamante, NM Gas Co. Distribution Superintendent
- John Ortiz & Matthew Baca, Comcast Superintendent
- Jayson Grover, Traffic Engineer, NM DOT

**FROM: 161 Nikki Lee**

Nikki Lee, Planning Specialist

**cc:** Dennis Romero, Water & Wastewater Executive Director  
John Wheeler, Electric Director

<b>CASE #:</b> MNSB2020-00300005
<b>PROJECT NAME:</b> Replat No. 1 of Love Subdivision Containing 4.908 Acres M/L and a Replat of Unplatted Tracts of Land within the Ortega Annexation situated in the NE ¼ of Section 27, T15N R19W, N.M.P.M. and a portion of Mentmore Meadows Annexation situated in the SE ¼ of Section 22, T15N R19W, N.M.P.M., City of Gallup
<b>PROPERTY OWNER:</b> AVA, LLC & ABA Land LTD, CO & LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.
<b>PROJECT LOCATION:</b> 3360 & 3366B, 3376C & 3380 W. Hist. Hwy. 66 & 2 vacant lots– aka; SE ¼ of Section 22, T15, R19 containing 5.29 acres; NE ¼ of Sec. 27, T15, R19 containing 0.098 acres; N/E ¼ of Section 27, T15, R19 containing 4.151 acres; N/E ¼ of Section 27, T15, R19 containing 6.405 acres; NE ¼ of Section 27 T15N R19W A/K/A Love Subdivision containing 4.908 acres
<b>DESCRIPTION:</b> FINAL PLAT REVIEW- This replat has changed from a major to a minor subdivision being that the property owners decided not to dedicate a right-of-way. This revised plat removed Ortega Circle, which took away the infrastructure requirements. They did however change the reconfiguration of the lots. The properties are presently zoned Heavy Commercial (HC) and no zone change is being requested. The final plat will be presented to the Planning & Zoning Commission as soon as possible, any conditions for approval should be included in staff recommendation to the Commission.
<b>ELECTRONIC COMMENTS ARE DUE BY: 23 JUNE 2020</b>

**NO Task Force Meeting has been scheduled**

**COMMUNITY PLANNER COMMENTS:**

P1.) Because utility easements are being vacated two (2) public hearings will be required for this minor subdivision. First public meeting through the Planning and Zoning Commission to approve the minor subdivision, second public hearing through City Council to approve the vacation of the existing utility easements.

P2.) Remove “Access Easement Dedicated This Plat” language from flag Lot 2. Access to Lot 2 already exists from NM 118 (Hwy 66). Access to Lot 1 can be obtained from NM 118 (Hwy 66). Any private access easement shall be done by a separate easement document between the private property owners.

P3.) Add signature line for Mayor and City Clerk for vacation of easements.

P4.) Either the front property line or the driveway is in the wrong location on the subdivision plat. Move front property line back to the proper location or remove the driveway from the plat, whichever is incorrect.

P5.) Recommend adjusting the western lot line of Lot 2 that parallels the existing shop to meet required side yard setbacks in order to alleviate clouds on the property’s title. The side yard setback for the Heavy Commercial (HC) zone district is ten feet (10’).

P6.) The portable building is encroaching across the property lines. The portable building will need to be relocated.

P7.) Ok to proceed to public hearings after all corrections are made to the plat and all corrections are reviewed and accepted by the Gallup Task Force.

***CITY ENGINEER COMMENTS:***

1. Future development will trigger pedestrian improvements along NM-118 (West Hwy 66) frontage in question.
  - a. Said improvements include ADA compliant SIX foot wide sidewalks.
  - b. NM-118 access must be ADA compliant.
2. Future development will also trigger a drainage plan; since, the subdivision is in excess of one acre.

***WATER DEPARTMENT COMMENTS:***

No requirements for this revision.

***WASTEWATER DEPARTMENT COMMENTS:***

No requirements for this revision.

***ELECTRIC DEPARTMENT COMMENTS:*** All City of Gallup owned electric equipment and lines have easements. However, on June 5<sup>th</sup> I did mention to surveyor that I was contacted by Loves engineering firm of line relocation. That line that needs to be relocated is CDEC line only that is not drawn on the map. The increase from 10’ to 20 diagonal line is a CDEC pole line that is now a PUE.

***FIRE DEPARTMENT COMMENTS:*** No Fire Department issues with replat. Future code requirements will be construction dependent.

**SOLID WASTE COMMENTS:** No issues with replat or subdivision

**CENTURYLINK COMMENTS:**

There is no conflict with this plat.

**NM GAS COMPANY COMMENTS:**

NMGC does not have any comments. The existing 30' Access & Utility easement remains in tact.

**COMCAST COMMENTS:**

I see no obvious conflicts with this replat.

**NM DEPT. OF TRANSPORTATION COMMENTS:**

The owners of Lots 1 to 3 need to be aware of the following.

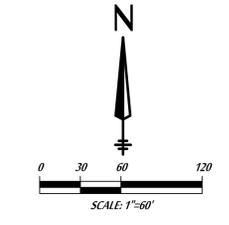
Currently, as far as the NMDOT is concerned, Ortegaz (Lot 1) is the only entity that technically has legal access to NM 118. They are the only business that has a current Driveway Permit with the Department.

Any future development/redevelopment of Lot 2 will require that the NMDOT be contacted about securing a NMDOT Driveway/Access Permit for that lot, even if this lot will continue to share access to NM 118 with Lot 1.

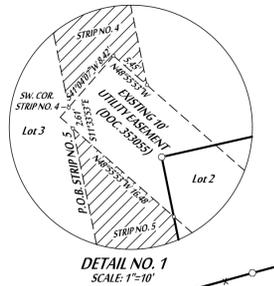
The Loves truck stop (Lot 3) currently has multiple points of access to their property, none of which appear to be legally permitted by the Department. Loves will need to take the steps necessary to permit their current access points. Any further development of Lot 3, or any changes to Lot 3 that will potentially increase traffic generation to/from the property will also require the reassessment of current access locations and design, and may warrant modifications or improvements to these existing driveways.

FINAL PLAT

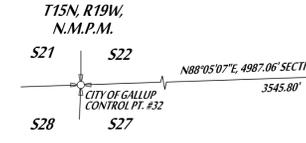
REPLAT NO. 1 OF LOVE SUBDIVISION, CONTAINING 4.908 ACRES M/L AND A REPLAT OF UNPLATTED TRACTS OF LAND WITHIN A PORTION OF THE ORTEGA ANNEXATION, SITUATED IN THE NE 1/4 OF SECTION 27, T. 15 N., R. 19 W., N.M.P.M., AND A PORTION OF MENTMORE MEADOWS ANNEXATION SITUATED IN THE SE 1/4 OF SECTION 22, T. 15 N., R. 19 W., N.M.P.M., CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO.



- LEGEND
SECTION CORNER FOUND 2.5" STEEL AXLE TIED 2" ALUMINUM PS13979 WASHER
FOUND 3" BRASS CAP IN 8" DIA. CONC. PILLAR NMDOT 1993
FOUND 1/2" REBAR W/DISINTEGRATED PS4329 YELLOW CAP, SET PS13979 ORANGE CAP
FOUND 1/2" REBAR W/PS4329 YELLOW PLASTIC CAP & PS13906 WASHER - 1/2" REBAR W/PS4075 CAP FOUND 0.12' WEST, NOT USED
FOUND 1/2" REBAR W/DISINTEGRATED PS11456 RED CAP, SET PS13979 ORANGE CAP
SET 5/8" REBAR W/PS13979 ORANGE PLASTIC CAP
FOUND 1/2" REBAR W/PS6540 CAP 1FT. SOUTH OF CORNER, NOT USED
DIMENSION POINT ONLY
DIMENSIONS/DATA FROM RECORD



- RECORD DOCUMENTS
1 ORTEGA ANNEXATION FILED AUGUST 25, 1982
2 LOVE SUBDIVISION FILED MARCH 01, 1985
3 TRUCK STOPS OF AMERICA ADDITION FILED MARCH 30, 1977
4 GALLUP INDUSTRIAL PARK ANNEX FILED OCTOBER 25, 1977
5 MENTMORE MEADOWS ANNEXATION FILED JULY 24, 1974



OWNER'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS, THAT THE FOREGOING 'REPLAT NO. 1 OF LOVE SUBDIVISION, CONTAINING 4.908 ACRES M/L AND A REPLAT OF UNPLATTED TRACTS OF LAND WITHIN A PORTION OF THE ORTEGA ANNEXATION, SITUATED IN THE NE 1/4 OF SECTION 22, T. 15 N., R. 19 W., N.M.P.M., AND A PORTION OF MENTMORE MEADOWS ANNEXATION SITUATED IN THESE 1/4 OF SECTION 22, T. 15 N., R. 19 W., N.M.P.M., CITY OF GALLUP, MCKINLEY COUNTY, NEW MEXICO;

AVA, LLC, ARTHUR ORTEGA, PRESIDENT/DIRECTOR
3360 W. HWY. 66
GALLUP, NM 87301
CELL #: (505) 870-3810

LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.
GREG LOVE, CEO/DIRECTOR
10601 N. PENNSYLVANIA AVE.
OKLAHOMA CITY, OK 73120
(405) 242-252

ACKNOWLEDGMENT

STATE OF NEW MEXICO )
COUNTY OF MCKINLEY ) SS
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS DAY OF 20

ACKNOWLEDGMENT

STATE OF )
COUNTY OF ) SS
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS DAY OF 20

NOTARY PUBLIC: MY COMMISSION EXPIRES:
NOTARY PUBLIC: MY COMMISSION EXPIRES:

CERTIFICATION OF APPROVAL FOR VACATION OF EASEMENTS

THE UNUSED PORTIONS OF THE EASEMENTS PLATTED WITHIN THE ORTEGA ANNEXATION AND LOVE SUBDIVISION WHICH ARE IDENTIFIED AS STRIPS 1 THROUGH 5 HEREON AND ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS:

- STRIP NO. 1: COMMENCE AT THE NE CORNER OF ORTEGA ANNEXATION, SAID POINT BEING THE NE CORNER OF THE STRIP HEREIN DESCRIBED AND THE REAL POINT OF BEGINNING; THENCE S88°05'07"W, 30.00' TO THE NW CORNER; THENCE N58°01'14"E, 34.38' TO THE SE CORNER; THENCE N02°44'19"W, 122.00' TO THE POINT OF BEGINNING, CONTAINING 0.0899 ACRES (39185.F.) MORE OR LESS.
-STRIP NO. 2: COMMENCE AT THE NW CORNER OF STRIP NO. 1 AS DESCRIBED ABOVE, SAID POINT BEING THE NE CORNER OF THE STRIP HEREIN DESCRIBED AND THE REAL POINT OF BEGINNING; THENCE S88°05'07"W, 38.55' TO THE NW CORNER; THENCE S56°50'14"W, 19.28' TO THE SW CORNER; THENCE N88°05'07"E, 43.72' TO THE SE CORNER; THENCE N02°44'19"W, 10.00' TO THE POINT OF BEGINNING, CONTAINING 0.0979 ACRES (42645.F.) MORE OR LESS.
-STRIP NO. 3: COMMENCE AT THE NW CORNER OF STRIP NO. 2 AS DESCRIBED ABOVE, THENCE S88°05'07"W, 38.55' TO THE NE CORNER OF STRIP NO. 3 AND THE REAL POINT OF BEGINNING; THENCE S88°05'07"W, 52.18' TO THE NW CORNER; THENCE S1°44'23"E, 15.50' TO THE SW CORNER; THENCE N88°05'07"E, 49.85' TO THE SE CORNER; THENCE N56°50'14"E, 19.28' TO THE POINT OF BEGINNING, CONTAINING 0.1164 ACRES (50785.F.) MORE OR LESS.
-STRIP NO. 4: COMMENCE AT THE SW CORNER OF STRIP NO. 3 AS DESCRIBED ABOVE, THENCE S88°05'07"W, 51.36' TO THE NE CORNER OF THE STRIP HEREIN DESCRIBED AND THE REAL POINT OF BEGINNING; THENCE S11°33'53"E, 219.92' TO THE SE CORNER; THENCE N48°55'53"W, 5.45' TO AN ANGLE POINT; THENCE S41°04'07"W, 8.42' TO THE SW CORNER; THENCE N11°33'53"W, 222.39' TO THE NW CORNER; THENCE N88°05'07"E, 10.00' TO THE POINT OF BEGINNING, CONTAINING 0.0503 ACRES (21895.F.) MORE OR LESS.
-STRIP NO. 5: COMMENCE AT THE SW CORNER OF STRIP NO. 4 AS DESCRIBED ABOVE, THENCE S11°33'53"E, 2.61' TO THE NW CORNER OF THE STRIP HEREIN DESCRIBED AND THE REAL POINT OF BEGINNING; THENCE S11°33'53"E, 480.26' TO THE SW CORNER; THENCE N78°26'07"E, 10.00' TO THE SE CORNER; THENCE N11°33'53"W, 467.16' TO THE NE CORNER; THENCE N48°55'53"W, 16.48' TO THE POINT OF BEGINNING, CONTAINING 0.1087 ACRES (47375.F.) MORE OR LESS.

ATTEST:

CITY CLERK CITY OF GALLUP, NEW MEXICO
MAYOR CITY OF GALLUP, NEW MEXICO

CERTIFICATION OF ACCEPTANCE AND APPROVAL

The above described subdivision and conditional acceptance of the dedication of right-of-way, easements and sites for city use and the plat thereof upon which this certificate appears is hereby approved by the Planning and Zoning Commission of the City of Gallup, New Mexico, this day of 20

ATTEST Secretary Chairman, Planning & Zoning Commission

APPROVALS

- CITY OF GALLUP, CITY ENGINEER
CITY OF GALLUP, ELECTRIC DIRECTOR
CITY OF GALLUP, WATER & WASTEWATER DIRECTOR
NM GAS COMPANY
QWEST CORPORATION DBA CENTURYLINK QX

CERTIFICATE OF FILING

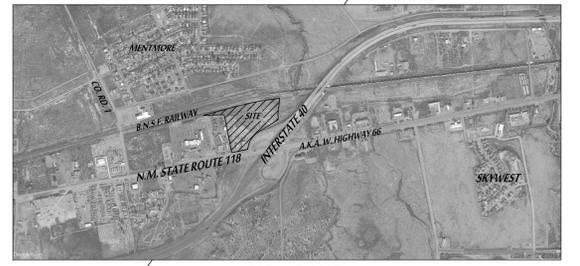
I, COUNTY CLERK AND EX-OFFICIO RECORDER FOR MCKINLEY COUNTY, NEW MEXICO DO HEREBY CERTIFY THAT THE PLAT CONTAINED HEREON WAS FILED IN MY OFFICE AS PROVIDED BY LAW ON THE DAY OF 20

CERTIFICATE OF FILING

I, THE UNDERSIGNED CLERK AND EX-OFFICIO RECORDER OF THE CITY OF GALLUP, NEW MEXICO, A MUNICIPAL CORPORATION OF THE STATE OF NEW MEXICO WITHIN THE COUNTY OF MCKINLEY, DO HEREBY CERTIFY THAT THE ABOVE PLAT WAS DULY FILED IN MY OFFICE AS PROVIDED BY

LAW ON THE DAY OF 20

CLERK AND EX-OFFICIO RECORDER CITY OF GALLUP, NEW MEXICO



NOTES

- 1 FIELD SURVEY MADE JANUARY 14 THRU JULY 09, 2020.
2 OWNERS: LOT 1: AVA, LLC (DOC. 386.385) ARTHUR ORTEGA, PRESIDENT; LOT 2: AVA, LLC & ABA LAND LTD. CO., LLC (DOC. 287042) ARTHUR ORTEGA, ORGANIZER; LOT 3: AVA, LLC & ABA LAND LTD. CO., LLC & MUSKETEER CORPORATION #215 (LOVE'S TRAVEL STOPS & COUNTRY STORES, INC.) (DB 37-434 & 435)
3 NO TITLE COMMITMENT PROVIDED FOR THIS SURVEY. THIS PLAT MAY NOT SHOW CERTAIN ITEMS OF AFFECT WHICH COULD BE LISTED THEREIN.
4 LOT 2 WAS NOT IMPROVED LOT AT TIME OF SURVEY. NUMEROUS PARKING AREAS AND DRIVEWAYS ON LOTS 1 & 3 NOT SHOWN.
5 ZONING: HC
6 BEARINGS SHOWN ARE REFERENCED TO THE CITY OF GALLUP HORIZONTAL AND VERTICAL CONTROL NETWORK. DISTANCES ARE HORIZONTAL GROUND.
7 DOCUMENTS REFERENCED FOR THIS SURVEY AND PLAT ARE LISTED HEREON.
8 FLOOD HAZARD: ACCORDING TO THE FEMA FLOOD MAP PANEL 35031C15ISE, EFFECTIVE ON FEB. 17, 2010, THESE PROPOSED LOTS ARE LOCATED IN ZONE 'X'; AREAS WITH LESS THAN A 0.2% CHANCE OF ANNUAL FLOODING.

SURVEYOR'S CERTIFICATE

I, Clyde J. King, New Mexico Professional Surveyor No. 13979, do hereby certify that this Subdivision Plat and the actual survey on the ground upon which it is based were performed by me or under my direct supervision; that I am responsible for this survey; that this survey meets the Minimum Standards for Surveying in New Mexico, and that it is true and correct to the best of my knowledge and belief. I further certify that this instrument is based upon a Boundary Survey of an existing tract or tracts.

Clyde J. King, PS13979 Date



**NAVAJO GALLUP WATER SUPPLY PROJECT**  
**EASEMENT AGREEMENT**

**This Agreement** made and entered in this 14<sup>th</sup> day of July 2020, by and between the City of Gallup, a New Mexico municipal corporation, hereinafter referred to as "City", and Rico Land and Cattle Company, hereinafter referred to as "Rico", the property owner,

WHEREAS, City desires to obtain an easement across property owned or controlled by Rico for the placement of a waterline and appurtenances including powerline, communication line, access road, valves and building for what is known as the Navajo Gallup Water Supply Project (NGWSP) and;

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

1. Rico is granting the easement needed by the City for the NGWSP simultaneous with this agreement, and in consideration for the covenants and promises made in this agreement.
2. Rico will be able to access NGWSP waterline, when built, at three (3) locations as agreed to by the parties at no cost. The parties further agree that City shall cause to be installed three (3) crosses at an agreed upon location, with proper valving, for the purpose of future service to Rico at no cost to Rico. Upon Rico making use of such connection, Rico shall be responsible for all costs associated with the materials, labor and equipment necessary to provide water service to all Rico property located south of the city limits within Sections 5 and 6, T14N, R18W N.M.P.M. McKinley County N.M. The water line installation shall be in accordance with City standards and details.
3. The parties agree Rico, once tapped into the water supply, will be at the rate charged by the City for water within the city limits to commercial customers (commercial volume charge) plus the customary monthly service charge plus any applicable surcharges and taxes, with the same being subject to periodic rate changes in Gallup's water rates and not at the higher rate for water customers outside the city limits of Gallup.
4. In addition to the provisions above, City agrees that there will be no fees, such as tap fees, charged to Rico in the future if, and when, Rico, or its successors-in-interest desire to access the water line which is to be constructed on the easements granted by Rico. Rico understands that it will be responsible for any and all costs associated with the design and construction of any pipe lines, valves, pressure regulators, pumps, tanks or other appurtenances necessary to provide water of sufficient capacity and pressure to support development by Rico on its property.

5. Rico understands and agrees that they will be required to obtain and install any equipment which may be necessary to reduce water pressure from the NGWSP line and install other equipment at their own expense in order to use it in a commercially reasonable way.
6. Rico understands that the amount of water City will be obtaining as part of the NGWSP is limited in both quantity and availability, and supplies to Rico in support of future development will be limited by the constraints placed on City under its various agreements for NGWSP, and subject to State and Federal regulations.
7. The parties warrant that each has the legal authority to enter into this Agreement is binding upon their respective successors, assigns, grantees, or any entity claiming by or through them.
8. This Agreement may only be modified or changed herein by a subsequent written agreement executed by both parties hereto.

By:   
Martin Menapace, President

CITY OF GALLUP

By: \_\_\_\_\_  
Louis Bonaguidi, Mayor

Attest:

By: \_\_\_\_\_  
Alfred Abeita, City Clerk

## GRANT OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, **RICO LAND AND CATTLE COMPANY**, a New Mexico Corporation, hereinafter termed the Grantor hereby grants, and conveys unto the **CITY OF GALLUP, NEW MEXICO**, a municipal corporation, a perpetual, full and unrestricted easement for utility purposes, in, upon, over and across the following described parcel of land located in Gallup, McKinley County, New Mexico, hereinafter described as follows:

### DESCRIPTION:

AN 80' WIDE AND 160' WIDE STRIPS OF LAND LYING WITHIN SECTION 5, T14N, R18W, N.M.P.M., MCKINLEY COUNTY, NEW MEXICO, THE CENTERLINES BEING MORE PARTICULARLY DESCRIBED WITH NEW MEXICO STATE PLANE WEST ZONE GRID BEARINGS AND GROUND DISTANCES AS FOLLOWS:

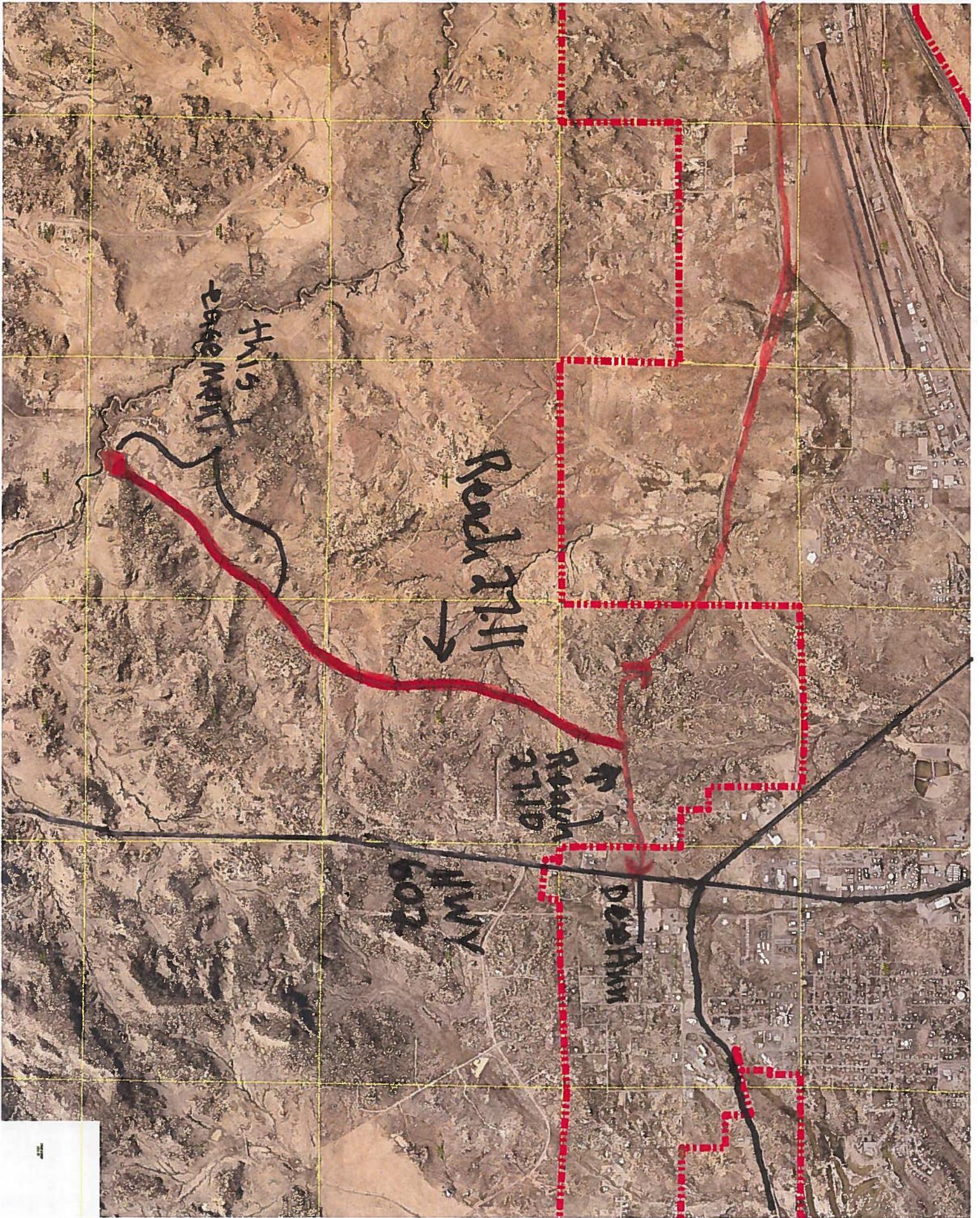
BEGINNING AT THE NORTHEAST SECTION CORNER OF SAID SECTION 5, THENCE S00°07'19"W, ALONG THE WEST SECTION LINE OF SAID SECTION 5, 1453.65' TO THE REAL POINT OF BEGINNING FOR THE 80' WIDE STRIP OF LAND:

THENCE S67°50'16"W, 300.01' TO A POINT OF CURVATURE;  
THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 750.00', A LENGTH OF 639.06', A DELTA OF 48°49'14", CHORD DIMENSIONS OF S43°25'39"W, 619.90' TO A POINT OF TANGENT;  
THENCE S19°01'02"W, 212.10' TO A POINT OF CURVATURE;  
THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00', A LENGTH OF 175.52', A DELTA OF 40°13'31", CHORD DIMENSIONS OF S39°07'48"W, 171.93' TO A POINT OF TANGENT;  
THENCE S59°14'34"W, 446.32' TO A POINT OF CURVATURE;  
THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 550.00', A LENGTH OF 93.55', A DELTA OF 9°44'42", CHORD DIMENSIONS OF S54°22'13"W, 93.43'; TO A POINT OF TANGENT;  
THENCE S49°29'52"W, 578.51' TO A POINT OF CURVATURE;  
THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 350.00', A LENGTH OF 162.72', A DELTA OF 26°38'15", CHORD DIMENSIONS OF S36°10'44"W, 161.26' TO A POINT OF TANGENT;  
THENCE S22°51'37"W, 358.06' TO A POINT OF CURVATURE;  
THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00', A LENGTH OF 124.12', A DELTA OF 28°26'46", CHORD DIMENSIONS OF S37°05'00"W, 122.85' TO A POINT OF TANGENT;  
THENCE S51°18'23"W, 1946.68' TO A POINT;  
THENCE S11°12'13"E, 280.00' TO THE POINT OF ENDING OF THE 80' WIDE STRIP OF LAND AND THE POINT OF BEGINNING FOR THE 160' WIDE STRIP OF LAND;  
THENCE S11°12'13"E, 159.28' TO THE A POINT ON THE SOUTH LINE OF SAID SECTION 5, FROM WHICH THE SOUTH 1/4 CORNER LIES S89°26'04"W, 843.36', SAID POINT BEING POINT OF ENDING OF THE 160' WIDE STRIP OF LAND.

TOGETHER THE 80' WIDE AND 160' WIDE STRIPS OF LAND CONTAIN 10.3494 AC.

Together with the free and unrestricted rights to the City of Gallup to place therein, thereunder, thereon, and above the same water, sewer lines and pipes, electric power lines, communication, fiber optic, access road and the necessary appurtenances of such facilities, and to grant the use thereof to others for such purposes, and to prohibit the use of such land for purposes which are or which may become, inconsistent with the use hereby granted. Together with the right to enter in, upon, over and across the





THIS  
EASEMENT

Road 2111  
→

Road  
2110  
←

HWY  
602

DORFMAN

KACHINA RENTALS LLC  
Mailing Address: HC 57 BOX 52  
GALLUP, NM 87301  
(505) 726-1740 Fax (505) 726-1741  
1-866-228-5245  
Email: [mike@kachinarentals.com](mailto:mike@kachinarentals.com)

July 13, 2020

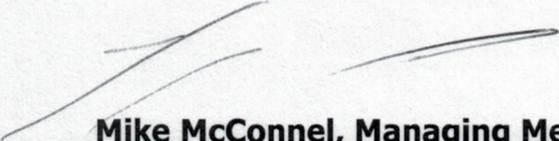
**City of Gallup**  
**Attn: Dennis Romero**

**Kachina Rentals, LLC is requesting sewer and water taps at the following addresses: 20 W NM Hwy 118, 22 W NM Hwy 118, and 34 W NM Hwy 118. Our office is located at 22 W NM Hwy 118. We have recently acquired the properties on either side of us. There is a 1/4 mile distance between 20 and 34.**

**We currently have a well and septic system at 22 W NM Hwy 118. The water has a bad smell and we will not drink it. We could benefit from being on the city water and sewer system.**

**Thank you for considering our request.**

**Sincerely,**



**Mike McConnel, Managing Member  
Kachina Rentals, LLC**



**RESOLUTION NO. R2020-25**

**A RESOLUTION REQUESTING WATER SERVICE OUTSIDE OF CITY LIMITS**

**WHEREAS**, Mr. Mike McConnel, Managing Member of Kachina Rentals, LLC (the “Applicant”) has requested water and sewer service taps at 20 W NM Highway 118 and 34 W NM Highway 118; and

**WHEREAS**, the Applicant an existing set of businesses at said addresses that could benefit from water service from the City of Gallup; and

**WHEREAS**, the Applicant has stated that the current well and septic system in use for these locations provides water of poor quality; and

**WHEREAS**, the Applicant has a current construction equipment rental business and self storage business at this location, with potential plans for a small commercial car wash; and

**WHEREAS**, the City of Gallup is prepared with its infrastructure to support the chosen site and sale of water to the Applicant; and

**WHEREAS**, Section 8-1-7 B.3 of the City Code was amended via Ordinance 2016-6 granting the City Council the powers to authorize by written resolution or contract the furnishing of water service to any user outside the corporate limits that may be individuals or private legal entities upon conditions and limitations set by city council in its sole discretion; and

**WHEREAS**, conditions and limitations associated with the approval of this resolution are attached.

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

The City of Gallup approves providing water service to the Applicant, with the attached conditions.

**PASSED, ADOPTED AND APPROVED THIS \_\_\_\_ DAY OF JULY, 2020.**

**CITY OF GALLUP, NEW MEXICO**

BY: \_\_\_\_\_  
Louis O. Bonaguidi, Mayor

ATTEST:

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

**General Conditions**

1. The Applicant agrees to pay for all water line extension and meter service fees/costs from the point that he connects to the City Water Distribution System to his businesses.
2. The Applicant shall grant City Staff access for the purposes of reading the water meter and taking any water samples that may be required under the Safe Drinking Water Act.
3. The Applicant agrees to follow best architecture and engineering practices in the design of the residence and any of its grounds to reasonably conserve water usage, as well as institute potential water recycling systems, where appropriate.
4. The Applicant agrees to repair any infrastructure additions that he constructs in a timely manner and bear the costs for these repairs.
5. The Applicant agrees to pay for water services in accordance with the City Utility Rate schedule and understands that rates may be adjusted on an annual basis.
6. The Applicant agrees to pay for, along with the purchase of water, applicable New Mexico Gross Receipts Taxes, the City Environmental Surcharge and Navajo Gallup Water Supply Project Assessment, or any additional charges that may be imposed upon similarly situated customers, as a condition of City Water Service.
7. The Applicant agrees to follow any Drought or Emergency Conservation Orders issued by the City.

**Specific Conditions**

1. The Applicant agrees that he will inform the City of any building additions or remodels of the completed structures, which may cause increased water usage.
2. The Applicant agrees that any subdivision of the areas served or the acquisition of any adjacent property by the Applicant will trigger a review of water service by the City and may, or may not, be approved.
3. The Applicant agrees that these conditions are covenants running with the land and are binding on the heirs and assignees of the Applicant. This Resolution and its conditions will be filed at the McKinley County Clerk's Office.

**AMENDMENT NO. 4**  
**to the**  
**CITY OF GALLUP, NEW MEXICO**  
**WASTEWATER TREATMENT FACILITY**  
**CAPITAL IMPROVEMENTS, OPERATIONS, MAINTENANCE**  
**AND MANAGEMENT AGREEMENT**

**THIS AMENDMENT NO. 4** to the City of Gallup, New Mexico Wastewater Treatment Facility Capital Improvements, Operations, Maintenance and Management Agreement dated the 22<sup>nd</sup> day of November 2016 (hereinafter “Agreement”), is effective on this \_\_\_\_ day of July 2020 by and between the City of Gallup, New Mexico (hereinafter “City”) and CH2M HILL Engineers, Inc. (hereinafter “Company”).

NOW THEREFORE, City and Company agree to amend the Agreement as follows:

1. The definition of “CPI” is deleted in its entirety and replaced with the following: “CPI” means the twelve-month average percent change (from January of the prior year to January of the current year) in the Consumer Price Index published by the United States Department of Labor Statistics for all urban consumes for the CUUR0000SA0 Index.
2. The “Summary of Estimated Pass Through Costs” table for Proposal A in Schedule 12, Appendix B are hereby amended with the following and the footnotes in the table are deleted in their entirety. Such amounts reflect the additional Pass Through Costs for the Facility operations, maintenance and management for the current Contract Term (July 1, 2020 through June 30, 2021):

<b>SUMMARY OF ESTIMATED PASS THROUGH COSTS 2020/21 CONTRACT TERM</b>	
<b>ITEM</b>	<b>ANNUAL COST</b>
1. Performance Bond Cost  Amount per million  (Bond size will be equal to the annual Service Fee, including pass-through costs.)	\$ 7,876
2. Insurance	\$11,871
3. Repair & Replacement (R&R) Capital Fund	\$70,000

This Amendment No. 4 together with the Agreement constitute the entire agreement between the parties and supersede all prior oral and written understandings with respect to the subject matter set forth herein. Unless specifically stated all other terms and conditions of the Agreement shall

remain in full force and effect. Neither this Amendment No. 4 nor the Agreement may be modified except in writing signed by an authorized representative of the parties.

The parties, intending to be legally bound, indicate their approval of this Amendment No. 4 by their signatures below.

Authorized signature:

Authorized signature:

**CH2M HILL ENGINEERS, INC.**

**CITY OF GALLUP, NEW MEXICO**

Name:   
Title: OMFS Regional VP  
Date: July 21, 2020

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



P.O. Box 91958 Albuquerque, NM 87199-1958

7/16/2020

**PROJECT NAME: Highway 491 Transmission Line**

Attached is a cost breakdown for three weeks to install 240' of 30" casing through rock at 20' per day with an American Augers Disc Cutter Head.

Classification	# Persons	Rate	Hrs.	Total
Super indent	1	\$35.00	120.0	\$4,200.00
Foreman	1	\$25.00	120.0	\$3,000.00
Operator	1	\$20.00	120.0	\$2,400.00
Labor / Driver	1	\$16.00	120.0	\$1,920.00
Classification	# Persons	OT Rate	Hrs.	Total
Super indent	1	\$52.50	0.0	\$0.00
Foreman	1	\$37.50	0.0	\$0.00
Operator	1	\$30.00	0.0	\$0.00
Labor	1	\$28.50	0.0	\$0.00

LABOR:

SUBTOTAL LABOR WAGES	\$11,520.00
MARKUP ON LABOR COSTS FOR PROJECT O/H & PROFIT - 10%	\$1,152.00
LABOR BURDEN (45% OF LABOR COSTS)	\$5,184.00
BOND (1% OF LABOR COSTS)	\$0.00

**TOTAL LABOR \$17,856.00**

Classification	# Equip.	Rate	Hour	Total
Welding / Service Truck	1	\$20.00	120.0	\$2,400.00
Welding / Service Truck	1	\$20.00	120.0	\$2,400.00
Water truck	1	\$20.00	120.0	\$2,400.00
PC 400 Excavator	1	\$100.00	120.0	\$12,000.00
36/600 AA Boring Machine	1	\$75.00	120.0	\$9,000.00
30" Augers	1	\$25.00	120.0	\$3,000.00
30" Disc Cutter Head	1	\$150.00	120.0	\$18,000.00
	0	\$0.00	-	\$0.00
	0	\$0.00	-	\$0.00

SUBTOTAL - EQUIPMENT	\$49,200.00
MARKUP (10%)	\$4,920.00

**TOTAL EQUIPMENT \$54,120.00**

Classification	Quantity	Rate	Day	Total
Perdiem	1	\$300.00	12.0	\$3,600.00
Mobilization	1	\$1,290.00	1.0	\$1,290.00

TOTAL -	\$4,890.00
MARKUP (10%)	\$489.00

**TOTAL per diem \$5,379.00**

Item	Quantity	Unit	Unit Cost	Total
30" Steel Casing	0	1	\$0.00	\$0.00
casing spacers & End Seals	1	1	\$0.00	\$0.00
Disc Cutters	9	1	\$1,495.50	\$13,459.50
	0	1	\$0.00	\$0.00

SUBTOTAL - Material	\$13,459.50
MARKUP (10%)	\$1,345.95

**TOTAL material \$14,805.45**

**TOTAL - ALL ITEMS \$92,160.45**

# NEW MEXICO PUBLIC REGULATION COMMISSION

## COMMISSIONERS

DISTRICT 1 CYNTHIA B. HALL  
DISTRICT 2 JEFFERSON L. BYRD, VICE CHAIR  
DISTRICT 3 VALERIE ESPINOZA  
DISTRICT 4 THERESA BECENTI-AGUILAR, CHAIR  
DISTRICT 5 STEPHEN FISCHMANN

## INTERIM CHIEF OF STAFF

Jason N. Montoya, P.E.



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

## STATE FIRE MARSHAL DIVISION

**John Kondratick**  
**Interim State Fire Marshal**  
Phone (505) 470-1044  
Fax (505) 476-0100

July 1, 2020

Chief Financial Officer  
City of Gallup  
PO Box 1270  
Gallup, NM 87305-1270

Ref: **First** Fiscal Year 2021 (FY 21) Fire Protection Fund Distribution for the **City of Gallup** Fire Department

Dear Chief Financial Officer,

The Public Regulation Commission and representatives from the State Fire Marshal Division met with the Office of the Superintendent of Insurance, Association of Counties, Fire Chiefs & Emergency Manager Affiliate, Municipal League, New Mexico Fire Chiefs Association and Department of Finance Authority to determine the annual Fire Protection Fund quarterly distribution dates.

**All NMFA payments, for outstanding department loans, have been paid in full for Fiscal Year 2021.**

The quarterly distribution dates for the Fire Protection Fund Fiscal Year 21 will be as follows:

- **1<sup>st</sup> quarter allocation/distribution** - On August 1<sup>st</sup> a 40% distribution of the "Total to Department After NMFA" amount will be allocated to the municipality or district.
- **2<sup>nd</sup> quarter allocation/distribution** - On November 1<sup>st</sup> a 20% distribution of the "Total to Department After NMFA" amount will be allocated to the municipality or district.
- **3<sup>rd</sup> quarter allocation/distribution** - On February 1<sup>st</sup> a 20% distribution of the "Total to Department After NMFA" amount will be allocated to the municipality or district.
- **4<sup>th</sup> quarter allocation/distribution** - On May 1<sup>st</sup> a 20% distribution of the "Total to Department After NMFA" amount will be allocated to the municipality or district.

The Quarterly Allocation/Distribution is based on the revenue received into the state of New Mexico for the FY 21 Fire Protection Fund.

The **August 1<sup>st</sup>** total **1<sup>st</sup> quarter Fiscal Year 2021 Fire Protection Fund allotment/distribution** to your fire department has been sent, and should be deposited via ACH, to your Bank account on record with DFA, in the amount of **\$190,035.60**.

**ORIGINAL INVOICE**

Please refer to the Table below for your complete FY 21 Fire Protection Fund **allotment/distribution quarterly** amounts including NMFA amounts for your fire department.

Department Name	Total Distribution	NMFA Amount	Total to Department (AFTER NMFA PAID)	First Allotment August FY 21 40% Total to Department (AFTER NMFA PAID)	Second Allotment November FY 21 20% Total to Department	Third Allotment February FY 21 20% Total to Department	Fourth Allotment May FY 21 20% Total to Department
City of Gallup	\$616,698.00	\$141,609.00	\$475,089.00	\$190,035.60	\$95,017.80	\$95,017.80	\$95,017.80

The amount allocated covers the period from July 1<sup>st</sup> 2020, through June 30<sup>th</sup> 2021, and shall be expended only for the maintenance of the fire department, the purchase, construction, repair and operation of its fire stations, fire apparatus and equipment, the payment of insurance premiums on fire stations, substations, fire apparatus and equipment, and insurance premiums for injuries or death of firefighters as otherwise provided by law. Such funds are to be expended at the direction of the Chief of each fire department in accordance with the provisions of the Public Purchases Act, the Fire Protection Fund Act, and the State Fire Marshal’s Rules and Regulations to the Act.

*\*Please be reminded that during the 2017 regular legislative session, House Bill 4 was enacted (Laws 2017, Chapter 1). Section 8 of House Bill 4 created requirements that the State Fire Marshal must follow in making a determination and certification of needs pursuant to Section 59A-53-3 NMSA 1978 and distributions pursuant to Sections 59A-53-4 and 59A-53-5.1, which pertain to the Fire Protection Fund. Specifically, the bill required the State Fire Marshal to coordinate with the Department of Finance and Administration (DFA), the New Mexico Finance Authority, Office of the State Treasurer, the New Mexico Municipal League and the New Mexico Association of Counties, regarding a periodic allotment schedules.*

Please contact me if you have any questions or concerns, at 505-470-1044 or [john.kondratick@state.nm.us](mailto:john.kondratick@state.nm.us)

Respectfully,



John Kondratick  
Interim State Fire Marshal

Cc: Mayor, City of Gallup

Walmart  
 702 S.W. 8th Street  
 Bentonville, AR 72716

GALLUP FIRE DEPARTMENT  
 1800 SOUTH SECOND STREET  
 GALLUP NM 87301



IN PAYMENT OF INVOICES TO **Walmart**  
 702 S.W. 8th ST.  
 BENTONVILLE, AR 72716

\* INCLUDES  
 AIDCO NORTH ARKANSAS WHOLESALE CO., INC.  
 SAM'S CLUB BEAVER LAKE AVIATION, INC.  
 BUD'S OUTLET STORES PHILLIPS COMPANIES, INC.  
 CMA\*USA WAL\*MART PHARMACY OF MICHIGAN, INC.  
 WAL\*MART PUERTO RICO, INC.

CHECK DATE: 06-29-20

CHECK NUMBER: 0666985

DATE	INVOICE NUMBER	STORE NUMBER	DOCUMENT NUMBER	TYPE CODE*	GROSS AMOUNT	DISCOUNT/ALLOWANCES	NET AMOUNT
06 25 20	62899517	05-09000	93208701		2500.00	0.00	2500.00

VENDOR: /9999999975 GALLUP FIRE DEPARTMENT 2500.00 0.00 2500.00

\* VENDOR: Deduction codes are described on the reverse side of this statement

↓ DETACH AT PERFORATION ↓

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER. THE BACK OF THIS DOCUMENT CONTAINS AN ARTIFICIAL WATERMARK - HOLD AT AN ANGLE TO VIEW

**Walmart**   
 702 S.W 8th St. BENTONVILLE, AR 72716

**Walmart**

WELLS FARGO BANK, N.A. <sup>66-156</sup>  
 CHARLOTTE, NC 28288-0013 531

NON-NEGOTIABLE AFTER 180 DAYS  
**0666985**

Vendor Number 9999999975	Check Date 06-29-20	Check Number 0666985
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PAY  
 TWO THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS

DOLLARS	CENTS
*****2,500.00	
NET AMOUNT OF CHECK	

TO THE GALLUP FIRE DEPARTMENT  
 ORDER 1800 SOUTH SECOND STREET  
 OF GALLUP NM 87301

WALMART, INC.

*M. Brett Biggs*



Executive Vice President and Treasurer

⑈0666985⑈ ⑆053101561⑆ 2079900136854⑈

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VENDOR - For your information, our deduction codes and descriptions are listed below:

CODE	DESCRIPTION	CODE	DESCRIPTION	CODE	DESCRIPTION	CODE	DESCRIPTION	CODE	DESCRIPTION
010	Price/Allowance Difference as Documented	031	P.O. Number Not on Invoice	048	Frt Should Be Prepaid to Consolidator	065	Late Shipment	082	Anticipation - Early Payment of Invoice
011	Price Difference PO/Invoice	032	Multiple P.O. Number on Invoice	049	Frt Cost to Forward Missrouted Shipment	066	Markdown Monies/Price Protection	083	Discount Not Taken at Time of Payment
012	Invoice Incorrectly Extended	033	P.O. Number Incorrect on Invoice	050	Advertising Allowance	067	Display Allowance	084	Interest on Recovery of Payment in Error
013	Substitution Overcharge	034	Pallet Charge	051	Promotional Allowance	068	Signing Allowance	085	Interest on Overpayment
014	Short/Damaged-Trailer Seal Intact	035	Sales Tax - State	052	Volume Allowance	069	Grocery Billback Allowance	086	Excise Tax
015	Short/Damaged-Pallets/Shrinkwrapped	036	Sales Tax - City	053	Truckload Allowance	070	COOP Allowance	087	Other
020	Concealed Damage	037	Insurance	054	Warehouse Allowance	071	Fixture Allowance	089	Credit Memo from Supplier
021	Concealed Shortage	038	Stop-Off Charge Incorrectly Added to Invoice	055	New Location Allowance	072	Labor and Handling-Ticketing/Reticketing	090	Unauthorized Charge - System Deduction
022	Merchandise Billed Not Shipped	039	Freight Cost on Backorder	056	Early Buy Allowance	073	Duplicate Payment	091	Merchandise Destroyed-Damaged/Defective
023	Carton Shortage SL&C	040	Routing Violation - Excessive Freight	057	Quantity Discount	074	Previous Account Debit Balance	092	Merchandise Return - Overstock/Recall
024	Carton Shortage Frt Bill Signed Short	041	Collect - Should have been Prepaid	058	DSDC Allowance	075	Transfer of Debit Balance	093	Merchandise Return - Damaged Merchandise
025	P.O.D./No Merchandise Received for Invoice	042	Backhaul/Pickup Allowance	059	Defective Merchandise Allowance	076	Buyers Reserve	094	Merchandise Return - Defective Merchandise
026	Carton Shortage-Misrouting Changed FOB	043	Mdse. S/B Combined for Lower Frt Cost	060	Handling Charge as Documented	077	Overpayment of Invoice Amount	095	Merchandise Return - Wrong Item
027	Carton Damage-SL&C	044	Freight on Returned Merchandise	061	Incorrect Color/Size Assortment	078	Storage Charges	096	Mdse for Repair/Assembly-Not Returned
028	Carton Damage-Frt Bill Signed Damaged	045	Prepaid Freight Incorrectly Added to Invoice	062	Labor and Handling-Packaging/Repackaging	079	Sample Charges	097	Returned Merchandise Handling Charges
029	Carton Damage-Misrouting Changed FOB	046	Freight Allowance	063	B/L Addressed to Wrong Location	080	Cash Discount	150	Softgoods Defective Allowance
030	Duplicate Billings	047	Excessive Freight Charge on Invoice	064	Early Shipment	081	Anticipation - Vendor Request	151	Purchase Rebate Allowance