

**LAND EXCHANGE AGREEMENT BETWEEN
THE CITY OF GALLUP AND THE GALLUP MCKINLEY COUNTY SCHOOL DISTRICT**

THIS LAND EXCHANGE AGREEMENT (the “Agreement”) is entered into this ___ day of April, 2022 (the “Effective Date”), by and between Gallup McKinley County School District No. 1 (hereinafter referred to as “School District”), a political subdivision of the State of New Mexico pursuant to N.M.S.A 1978 §22-4-1 *et seq.*, and the City of Gallup (hereinafter referred to as “City”), a New Mexico municipal corporation.

WHEREAS, the City is in need of property adjacent, or in close proximity, to the City’s public safety building on which to store impounded vehicles and other evidentiary items due do the construction of a new facility on the site beginning in July of 2022; and

WHEREAS, the School District owns a parcel of land adjacent to the public safety building that meets the needs of the City and that the School District no longer needs to store and maintain buses; and

WHEREAS, the School District is in need of property on which to construct housing for teachers that are employed by the School District; and

WHEREAS, the City owns a parcel of land located within the City that meets the needs of the School District and that the City has no foreseeable use for; and

WHEREAS, the parties have obtained appraisals of the two parcels and the appraised values are almost identical with the property currently owned by the School District having an appraised value of \$675,000 and the property currently owned by the City having an appraised value of \$685,000; and

WHEREAS, the parties desire to exchange ownership of the two parcels without additional consideration being paid by either party;

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

- 1. AGREEMENTS TO CONVEY TITLE.** Subject to the terms and conditions of this Agreement, at Closing;
 - a.) the City will convey to the School District, by Special Warranty Deed, a parcel of land located in the southwest quarter of Section 18, T15N, R17W, NMPM; more particularly described as follows:

Beginning at the southwest corner of said Section 18, thence North 0° 20’ E along the section line a distance of 1259.5 feet to a point;
Thence South 30° 14’ E a distance of 1452.5 feet to a point;
Thence South 89° 39’ W a distance of 738.73 feet to the point of beginning;
Containing 10.7 acres, more or less.
 - b.) the School District will convey to the City, by Special Warranty Deed, a parcel of land, commonly referred to as the “bus barn” property, located in the E ½ of the NE ¼ of the NE ¼ of Section 23, T15N, R18W, NMPM, which has not yet been surveyed and subdivided out of an existing 80.434 acre “parent parcel.” The approximate dimensions and location of the “bus barn” property are as follows:

Beginning at the northeast corner of said Section 23, thence due south along the section line approximately 1142 feet to a point where the section line intersects the eastern boundary of the N.M. Department of Transportation’s right of way for State Highway 564 (Boardman Drive);

Thence NNE along the eastern boundary of the right of way approximately 1192 feet to a point where the right of way boundary intersects the northern section line of Section 23; Thence due east along the section line approximately 375 feet to the point of beginning; Containing approximately 4.34 acres and including all structures, improvements and fixtures currently existing.

2. **SURVEY AND SUBDIVISION PLAT.** Within thirty (30) days of the Effective Date, the School District will submit to the City for approval an application to administratively subdivide the “parent parcel” into two separate parcels pursuant to Subdivision Regulations contained in Chapter 11 of the Gallup Land Development Standards (LDS). The School District will pursue, with due diligence, the approval of a final subdivision plat to be recorded at the McKinley County Clerk’s Office at least fourteen (14) days prior to the Closing Date.
3. **ZONING CHANGE REGARDING THE PROPERTY CURRENTLY OWNED BY THE CITY.** The parties agree that the School District’s primary use for the property currently owned by the City will be to provide multi-family housing and that the acquisition of that property is economically viable only if the School District can construct multi-family housing on the property. The property is currently zoned as “Single Family Residential-Type B” (SFR-B), a zoning classification in which the Gallup LDS do not allow for multi-family housing structures. The zoning classifications in which multi-family housing is allowed are: Multi-Family Residential Medium (MFRM), Multi-Family Residential High (MFRH), Mixed-Use Neighborhood (MXN), and Mixed-Use Center (MXC). The adjoining property immediately to the west of the subject property is zoned MXN making a change in zoning of the subject property to MXN the most logical of the four possible zoning classifications. Therefore,
 - a.) Within fifteen (15) days of the Effective Date, the City will submit an application to amend the Zoning Map pursuant to the procedures set forth in Section 10-5-B-d of the Gallup LDS. The School District will assist in the preparation of the application as requested by the City. The City will make all reasonable efforts to expedite the approval process within the time frames laid out in the LDS.
 - b.) If the application to amend the Zoning Map and change the zoning status of the subject property to MXN is not approved at least fifteen (15) days prior to the Closing Date, through no fault of the School District, the School District may terminate this Agreement by providing written notice to the City of its intent to terminate at least fourteen (14) days prior to the Closing Date.
4. **ENVIRONMENTAL INSPECTION.** Each party is entitled to obtain a Phase I Environmental Report with respect to the property that such party is the Grantee, at such party’s sole expense. A party that obtains a Phase I Environmental Report may terminate this Agreement due to any condition disclosed by such inspection that renders the property unsuitable for the party’s intended use of the property. The decision as to whether the property is unsuitable for its intended purpose shall be within the sole discretion of that party and such determination shall be final and binding on both parties and not subject to judicial review. If a party determines that the property for which it is the Grantee is unsuitable for its intended use of the property, it must submit written notice of termination within forty-five (45) days of the Effective Date. If a party does not submit such notice of termination within

the deadline specified herein, that party shall have no further right to terminate this Agreement upon the basis that the property is unsuitable for its intended purpose.

5. GRANTOR'S WARRANTIES. Each party, with respect to the property for which it is the Grantor, warrants to the other as follows:

- a.) Authority.** The Grantor has the authority to enter into this Agreement and to consummate the transactions contemplated herein. At Closing, all necessary and appropriate action will have been taken by Grantor authorizing and approving the performance by Grantor of Grantor's duties and obligations under this Agreement and of all other acts necessary and appropriate for the conveyance of the property as contemplated herein.
- b.) Title and Characteristics of Property.** The Grantor, as of the Effective Date, owns the Property in fee simple and has marketable and good title of public record.
- c.) Conflicts.** The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Grantor at the Closing and the performance by Grantor of its duties and obligations under this Agreement and of all other acts necessary and appropriate to complete the conveyance of the property, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Grantor is a party, or any judicial order or judgment of any nature by which Grantor is bound.
- d.) Litigation.** There is no action, suit or proceeding pending or, to Grantor's knowledge, threatened by or against or affecting Grantor or the property, which does or will involve or affect the property or title thereto. Grantor will defend, indemnify and otherwise hold the Grantee harmless from any and all claims of any person due to, arising out of or relating to the property, including any and all costs, expenses, and attorneys' fees which Grantee may incur as a result of Grantor's breach of its warranty hereunder. Grantor will, promptly upon receiving any such notice or learning of any such contemplated or threatened action, give Grantee written notice thereof.
- e.) Boundaries.** To Grantor's knowledge, there (i) is no dispute involving or concerning the location of the lines and corners of the property; (ii) are no encroachments on the property and no portion of the property is located within any "Special Flood Hazard Area" designated by the Federal Emergency Management Agency; and (iii) no portion of the property is located within a watershed area imposing restrictions upon the use of the property or any part thereof.
- f.) No Violations of Law.** The Grantor has received no notice there are any violations of State or Federal laws, municipal or county ordinances, or other legal regulations or requirements with respect to the property. The Grantor has received no notice (oral or written) that any governmental or quasi-governmental authority has determined that there are such violations. In the event Grantor receives notice of any such violations affecting the property prior to the Closing, Grantor shall promptly notify Grantee thereof, and shall promptly and diligently defend any prosecution thereof and take any and all necessary actions to eliminate said violations.
- g.) Hazardous Waste or Substances.** To the best of Grantor's knowledge, there are no areas of the property where hazardous substances or hazardous wastes, as such terms are defined by applicable

Federal and State statutes and regulations, have been disposed of, released, or found on the property.

h.) **Mechanics and Materialmen.** At Closing, Grantor will not be indebted to any contractor, laborer, mechanic, materialmen, architect, or engineer for work, labor, or services performed or rendered, or for materials supplied or furnished, in connection with the property for which any person could claim a lien against the property.

i.) **Foreign Ownership.** Neither party is a “foreign person” as that term is defined in the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated pursuant thereto. The conveyance of the property by the Grantor is not subject to the requirements of 26 U.S.C. §1445.

6. **GRANTOR’S DISCLOSURES.** Each party, with respect to the property for which it is the Grantor, shall provide to the Grantee within thirty (30) days of the Effective Date, the following documents and records, to the extent they are within the possession or control of the Grantor:

a.) **Disclosure Statement.** A disclosure statement of the property signed and dated by the Grantor;

b.) **Studies and Reports.** All copies in the Grantor’s possession of studies and/or reports which have previously been performed in connection with or for the property, including without limitation, environmental reports, soils studies, seismic studies, physical inspection reports, site plans and surveys, and identification of such studies of which the Grantor is aware but that are not in their possession;

c.) **Written Notices.** All copies of written notices relating to a violation of a Local, State, or Federal law.

d.) **Other Documents.** Any other documents related to the Property that could serve as evidence to adversely affect its value.

7. **GRANTEE’S WARRANTIES.** Each party, with respect to the property for which it is the Grantee, warrants to the other as follows:

a.) **Authority.** Grantee is a lawfully constituted entity and has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein. At Closing, all necessary and appropriate action(s) will have been taken by Grantee authorizing and approving the performance by Grantee of Grantee’s duties and obligations under this Agreement and of all other acts necessary and appropriate for the conveyance of property as contemplated herein.

b.) **Conflicts.** The execution and entry into this Agreement and the performance by Grantee of Grantee’s duties and obligations under this Agreement and of all other acts necessary and appropriate to complete the conveyance of the property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under any contract, agreement or other instrument to which Grantee is a party, or any judicial order or judgment of any nature by which Grantee is bound.

8. **CLOSING PROCEDURE.** The Closing shall be conducted in conformity with the laws of New Mexico and the mutual obligations set forth herein.

- a.) **Closing Date.** No later than forty-five (45) days following the Effective Date, the parties shall set a mutually agreeable date on which to conduct the Closing. **Closing** shall occur no more than seventy-five (75) days after the Effective Date. The parties may extend the deadline for Closing only in a written instrument agreed to and executed by both parties.
- b.) **Conveyance Documents.** At the time of closing, each party, with respect to the property for which it is the Grantor, provide a Special Warranty Deed that conveys merchantable title to the Grantee, subject only to Easements, Conditions, Restrictions and Reservations of record or in existence.
- c.) **Encumbrances and Liens.** Any outstanding mortgage, lien or other encumbrance on the property shall be paid and released on or before the Closing Date.
- d.) **Closing and Other Costs.** The City and the School District shall each pay their respective attorneys' fees. The Grantee will pay the recording fee for the deed. The School District will pay all costs associated with its obligation in Section 2 of this Agreement to apply for and obtain approval of the a final subdivision plat including, but not limited to the costs associated with surveys, plat preparation, and applicable application and recording fees. If a party obtains a Phase I Environmental Report pursuant to Section 3 of this Agreement, that party shall pay all costs associated with obtained said Environmental Report. The City shall pay one-half of the escrow fee, the recording fees charged for all documents and the cost of the Title Commitments.
9. **CURE PERIOD.** Prior to any claim for default being made, both the City and the School District will have an opportunity to cure any alleged default. If either the City or the School District fails to comply with any provision of this Agreement, the other party will deliver written notice to the non-complying party specifying such non-compliance. The non-complying party shall have seven (7) calendar days after delivery of such notice to cure the non-compliance.
10. **DEFAULT.** If the successful conveyance of either property as contemplated by this Agreement is not consummated due to either party's failure to perform any of the obligations contained in this Agreement, the non-defaulting party's sole and exclusive remedy shall be to seek specific performance of this Agreement. Each party hereby covenants that it will not pursue any claim or cause of action at law for the purpose for the purpose of obtaining damages of any kind caused by the other party's breach of any of the terms of this Agreement, by any tortious act or omission of the other party arising out of, or committed in connection with the performance or non-performance of any of the obligations contained in this Agreement.
11. **ATTORNEYS' FEES.** In any claim or controversy arising out of or relating to this Agreement, the prevailing party will be awarded reasonable attorneys' fees, costs, and expenses.
12. **DAMAGE TO THE PROPERTY.** If either property is damaged by fire or other casualty, after the Effective Date and before the Closing, the party that is the Grantor with respect to that property will bear the risk of loss and the Grantee may cancel this Agreement without liability. Alternatively, the Grantee will have the option to consummate the transfer and the Grantor will transfer to the Grantee at Closing any insurance proceeds or Grantor's claim to any insurance proceeds payable for the damage. The Grantor will cooperate with and assist the Grantee in collecting any such proceeds. The Grantor shall not settle any insurance claim for damage caused by casualty without the consent of the Grantee.

13. NOTICES. Any notice, approval, objection or other communication that this Agreement requires to be in writing, may be delivered (i) by certified mail (with return receipt) addressed to the person and address specified below; (ii) by hand delivery to the person specified below; or (iii) by email sent to the person and email address specified below, but only if the email requires an affirmative confirmation of receipt by the recipient. The same shall be deemed to have been given on the date when actually received, if sent by certified mail or if hand delivered, and on the date the recipient affirmatively acknowledges receipt if sent by email.

The notice addresses of the parties are as follows:

For the City:

City of Gallup
City Manager's Office
110 W. Aztec Ave.
Gallup, NM 87301
Email: manager@gallupnm.gov

with a copy to:

City of Gallup
City Attorney's Office
110 W. Aztec Ave.
Gallup, NM 87301
attorney@gallupnm.gov

For the School District:

Gallup McKinley County Schools
Superintendent's Office
640 S. Boardman
Gallup, NM 87301
Email: [INSERT EMAIL ADDRESS]

with a copy to:

Rosebrough, Fowles, and Foutz
Attn: Doug Fowles
P.O. Box 1077
Gallup, NM 87305
doug@rf-lawfirm.com

14. EFFECTIVE DATE AND DEADLINES. The deadlines contained herein that are measured from the "Effective Date" are calculated by excluding the Effective Date and by counting subsequent calendar days. The deadline expires at 5:00 P.M. MDT on the last day unless the last day falls on a Saturday, Sunday or legal holiday, in which case the deadline will expire at 5:00 P.M. MDT of the next business day.

15. ENTIRE AGREEMENT. This Agreement supersedes any and all prior understandings and agreements between the parties, whether oral or written, with respect to the properties that are the subject of this agreement. This Agreement constitutes the sole and only agreement between the parties with respect to the conveyance of those properties and the parties agree that there are no representations, promises, inducements, understandings or agreements, either verbal or written, which are not embodied in this Agreement. Any representation, promise, inducement, understanding or agreement that is not contained in this Agreement shall not be valid or binding or have any force or effect.

16. AMENDMENT. This Agreement may only be amended in writing, agreed to and executed by the parties.

17. UNENFORCEABLE OR INAPPLICABLE PROVISIONS. If any provision of this Agreement is, for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein, unless such unenforceable provision materially affects any material covenants set forth herein.

18. COUNTERPARTS AND COPIES. This Agreement, and any amendment hereto, may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical. Delivery of a signed facsimile copy or delivery of a signed copy by email shall have the same effect as delivery of a signed original.

19. APPLICABLE LAW AND VENUE. This Agreement will be construed under and in accordance with the laws of the State of New Mexico. Venue for any action concerning or related to this Agreement shall be in the Eleventh Judicial District Court located in McKinley County.

20. PUBLIC EDUCATION DEPARTMENT AND BOARD OF FINANCE APPROVAL. This Agreement is not valid or enforceable and has no binding force or effect unless and until:

a.) it is approved by the New Mexico Public Education Department pursuant to NMSA 1978 §13-6-2(D); and

b.) it is approved by the New Mexico Board of Finance pursuant to NMSA 1978 §13-6-2.1(A).

[LEFT INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS.]

DRAFT

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY OF GALLUP

Louie Bonaguidi, Mayor

Attest:

Alfred Abieta II, City Clerk

GALLUP MCKINLEY COUNTY SCHOOL DISTRICT No. 1

Charles Long, Board President

Attest:

Michael Schaaf, Board Secretary

APPROVALS:

PUBLIC EDUCATION DEPARTMENT

The foregoing Land Exchange Agreement is approved by pursuant to NMSA 1978, §13-6-2(D).

Signature

Date

Name, Title

DEPARTMENT OF FINANCE AND ADMINISTRATION

The foregoing Land Exchange Agreement is approved by pursuant to NMSA 1978, §13-6-2.1(A).

Signature

Date

Name, Title