

SPECIFIC AWARD CONDITIONS  
U.S. DEPARTMENT OF COMMERCE  
Economic Development Administration (EDA)

**CONSTRUCTION PROJECTS:** Public Works and Economic Adjustment Assistance Programs  
under Sections 201 and 209 of the Public Works and Economic Development Act, as amended,  
42 U.S.C. §§ 3141 and 3149

<b>Project Title: McKinley County Industrial Park Water Extension and Upgrade</b>	
<b>Recipient Name: City of Gallup</b>	<b>Project Number: 08-79-05634</b>

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed Form CD-451.

The *Authorized Scope of Work* for this project includes:

Extending (potable) watermain utilities to an industrial park by constructing a waterline of approximately 2450 LF. Includes all necessary trenchwork, valves, and tie-ins. Also, installation of three fire hydrant assemblies.

Install well features into two new groundwater wells. The well features will each include pump houses, well head protections, necessary piping and appurtenances, submersible pumps, drop pipes and check-valves, extension of power supply, and necessary SCADA and electrical controls.

2. The Recipient Contact's name, title, address, and telephone number are:

Maryann Ustick City Manager Phone: 505-863-1221 Email: mustick@gallupnm.gov	City of Gallup 110 West Aztec Avenue Gallup, NM 87305-1270
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3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

Jorge Ayala Regional Director Cell: 512-499-0478 Email: JAyala@eda.gov	Economic Development Administration 1201 San Jacinto Blvd. Suite 206 Austin, Texas 78701
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4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Jessica Falk Area Director Phone: 512-381-8144 Email: JFalk@eda.gov	Economic Development Administration 1201 San Jacinto Blvd. Suite 206 Austin, Texas 78701
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5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Recipient and receives all reports and payment requests. The Project Officer is:

Rachael Gleason Civil Engineer/Project Officer Phone: 512-621-9557 Email: RGleason@eda.gov	Economic Development Administration 1201 San Jacinto Blvd. Suite 206 Austin, Texas 78701
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6. **ADDITIONAL INCLUDED DOCUMENTS:** In addition to the regulations, documents, or authorities incorporated by reference on the *Financial Assistance Award* (Form CD-450), the following additional documents are hereby incorporated by reference into this Award:

- EDA Construction Standard Terms and Conditions for Construction Projects (March 22, 2021); and
- The Recipient’s application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation.

Should there be a discrepancy among these documents, the Specific Award Conditions (this document), including any attachments, shall control.

7. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project Development Time Schedule:

Return of Executed Financial Assistance Award .....	30 calendar days after receipt of Form CD-450/CD-451
Start of Construction.....	24 Months from the Date of Award
Construction Completed .....	48 Months from the Date of Award
Authorized Award End Date.....	No later than May 31, 2027
Submission of Final Financial Report (SF-425) .....	No later than 120 calendar days from the Award End Date

All work under this award **must be completed by May 31, 2027** to allow for closeout and final disbursement prior to **September 30, 2027**. By operation of the Account Closing Statute (31 U.S.C. §§ 1552(a)), on September 30, 2027 any remaining balances will be cancelled and no longer available for expenditure for any purpose.

Project Closeout – All project closeout documents, including final financial reports (Form SF-425 or any successor form) and any required program reports, shall be submitted to EDA not more than 120 calendar days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall diligently pursue the development of the project so as to ensure completion within this time schedule and shall promptly notify EDA in writing of any event that could substantially delay meeting any of the prescribed time limits for the project as set forth above. The Recipient further acknowledges that failure to meet the development time schedule may result in EDA taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. §§ 200.338–200.342, as applicable.

## 8. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

**A. AWARD DISBURSEMENTS: Reimbursement basis only.** EDA will make disbursements under this Award on a reimbursement basis only, based on actual costs incurred, after all preconditions set forth in these Specific Award Conditions have been met.

The “*Request for Reimbursement*” (Form SF-271 or any successor form) is used to request a disbursement, which shall be approved in writing by the Project Officer.

Please note that prior to the initial disbursement, the Recipient must complete the attached Form SF-3881 (or any successor form) “*ACH Vendor/Miscellaneous Payment Enrollment Form*” and submit it to NOAA’s Accounting Office by FAX at (301) 528-3675. (*FAX is required to secure confidentiality of sensitive information.*) The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

### B. REPORTS:

- a. *Project Progress Reports*: The Recipient shall submit project progress reports to the Project Officer on a quarterly basis on **January 31, April 30, July 30, and October 31**, for the periods ending December 31, March 31, June 30, and September 30, or any portion thereof, until the final disbursement is made by EDA. Reports should be submitted using the approved EDA template, which will be provided by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than 1 month following the end of the quarterly period.
- b. *Financial Reports*: The Recipient shall submit a “*Federal Financial Report*” (Form SF-425 or any successor form) on a semi-annual basis for the periods ending **March 31** and **September 30**, or any portion thereof, for the entire project period. Form SF-425 and instructions for completing this form are available at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>.

A final Form SF-425 must be submitted no more than 90 calendar days after the expiration date of the Award (*i.e.*, the Award End Date specified on the Form CD-450 or a subsequently executed Form CD-451). Final Financial Reports should follow the guidance outlined in the instructions for submitting mid-term financial

reports, but should ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.

9. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the *Financial Assistance Award* (Form CD-450), including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200.

Except as otherwise expressly provided for within these Specific Award Conditions, the Federal share of the allowable costs shall be based on the Investment Rate for the Award, as established on the Form CD-450 or any subsequent amendment (Form CD-451). In the event of an underrun in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate. The Federal share of total allowable costs shall not exceed the dollar amount specified on the original Award or any subsequent amendments.

Line Item Budget:

- A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Amount)	\$ 3,515,108
Non-Federal Matching Share	\$ 0
<b>Total Project Cost</b>	<b>\$ 3,515,108</b>

- B. Under the terms of this Award, the total approved line item budget is:

<b>COST CLASSIFICATION</b>	<b>Proposed</b>	<b>Approved</b>
Administrative and legal expenses		
Land, structures, rights-of-way, etc.		
Relocation expenses and payments		
Architectural and engineering fees	\$ 277,900.00	\$ 277,900.00
Other architectural and engineering fees		
Project inspection fees	\$ 161,200.00	\$ 161,200.00
Site work	\$ 50,000.00	\$ 50,000.00
Demolition and removal		
Construction	\$ 2,679,300.00	\$ 2,679,300.00
Equipment		
Contingencies	\$ 166,708.00	\$ 166,708.00
<b>Total Project Cost</b>	<b>\$ 3,515,108.00</b>	<b>\$ 3,515,108.00</b>

10. **FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, as stated on the Form CD-450, whichever is less.
11. **MATCHING SHARE:** The Recipient agrees to provide the Recipient's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses (see 13 C.F.R. § 300.3). By accepting the Award, the Recipient also certifies that the Matching Share of the project costs is committed to the project, is not encumbered in any way that would prevent its use for the project, and will be available as needed for the project.
12. **REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** Treasury has given EDA two options for having payments deposited to EDA's account:
  - i. The first is the pay.gov website. This option allows the payee to pay EDA through the internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
  - ii. The second is wire transfer via FedWire. Upon request, EDA can provide instructions on how the payee's financial institution can remit a FedWire payment to EDA.
13. **CONSTRUCTION COMPLETION:** In keeping with prudent grants management policy, EDA construction projects must be completed within five (5) years of the date the Form CD-450 is signed by the Recipient accepting the Award. If construction is not completed by that date and the Grants Officer determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to be completed promptly and expeditiously, the grant may be terminated. Extensions beyond the five-year project period are exceedingly rare and can only be authorized by the Assistant Secretary. Nothing in this paragraph is intended to alter the Project Development Time Schedule set out in paragraph 7, above.
14. **USEFUL LIFE:** The useful life of this project is hereby determined to be 20 years from the date of Grant Award.
15. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth at 41 C.F.R. part 60-4 establish goals and timetables for the participation of minorities and women in the construction industry. Those regulations apply to all federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with those regulations and shall obtain compliance with 41 C.F.R. part 60-4 from contractors and subcontractors employed on the project by including such notices, clauses, and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. part 60-4. The goal for the participation of women in each trade area shall be as follows: from April 1, 1981 until further notice: 6.9 percent.

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80 of the Federal Register notice published October 3, 1980 at 45 FR 65984-65991, or any subsequently published amendments. The Recipient shall include the “*Standard Federal Equal Employment Opportunity Construction Contract Specifications*” (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6. The minority participation goal for this project is 45.9 percent.

16. **PROCUREMENT:** The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. §§ 200.317–200.326.
17. **PROJECTS WITHIN STATE/CITY OR RAILROAD RIGHT-OF-WAY:** The Recipients confirm and agree that (a) Recipients are committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the project consistent with this Award, and (b) if at any time during the Estimated Useful Life of the Project any or all of the improvements in the project within public highway(s) or railroads are relocated for any reason pursuant to requirements of the owner of the public highway or railroad, the Recipients shall be responsible for accomplishing the relocation, including as necessary expending the Recipients’ own funds, so that the Project continues as authorized by this Award. Prior to award of the construction contract for the improvements to be constructed with funds from this Award, Recipients shall submit to EDA all written authorization(s) (i.e., State permits, Right of Entry, etc.) necessary for the Project to be constructed within this right of ways. The authorization(s) shall have no time limits that restrict the use of the public highway for the Project during the Estimated Useful Life of the Project. It is determined and agreed that the Estimated Useful Life of watermain utilities is 20 years.
18. **ARCHITECT/ENGINEER AGREEMENT:** Prior to initial disbursement of funds by EDA, the Recipient must submit to the Government for approval, an Architect/Engineer Agreement that meets the requirements in the EDA’s “Summary of EDA Construction Standards,” as well as the competitive procurement standards of 2 C.F.R. Part 200, as applicable. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.
19. **STATE HISTORIC PRESERVATION OFFICE (SHPO) CONSULTATION:** Prior to advertisement for bids, Recipient shall provide satisfactory evidence that the supplemental archaeological documentation requested by the State Historic Preservation Officer (SHPO) in the letter dated August 11, 2022, or any subsequent date, from the State Historic Preservation Office has been performed, reviewed by SHPO, and that SHPO has provided written final approval of the project. Recipient agrees to comply with any and all conditions of the final SHPO approval. If the Recipient does not or cannot provide the SHPO approval as required in this Special Award Condition, Recipient agrees, at the discretion of EDA, to terminate this Award for convenience.

- 20. HISTORICAL RESOURCES:** If during construction of the project, historical and archaeological resources, including burial grounds and artifacts are discovered, the Recipient shall immediately stop construction in the area, contact the State Historic Preservation Officer and EDA and follow the SHPO's instruction for the preservation of resources.
- 21. U.S. ARMY CORP OF ENGINEERS (USACE) CONSULTATION:** Prior to advertisement for construction bids, the Recipient shall provide evidence satisfactory to EDA consultation with the U.S. Army Corps of Engineers has been completed. Any permits if required by USACE, shall be obtained by the Recipient. Any subsequent mitigation as required by the Permit becomes part of the project conditions and completed prior to final disbursement of funds.
- 22. GRANT ADMINISTRATION PLAN:** Within sixty (60) calendar days of accepting the EDA Financial Assistance Award, the Recipient shall provide to the Regional Office a Grant Administration Plan which outlines how the Recipient will administer the EDA Award. The Plan must include the following information:
- a. Names, addresses, phone and facsimile numbers and email addresses for all personnel responsible for all activities pertaining to the EDA Award. These activities include, but are not limited to, compliance with grant conditions, processing payment requests to EDA, engineering activities such as design, inspection, and legal services.
  - b. Proposed detailed project implementation schedule. The schedule shall contain as a minimum, the following milestones:
    - i. Request for Proposals for Engineering Services
    - ii. Award of Engineering Contract
    - iii. Start of Design Activities
    - iv. Completion of Final Plans and Specifications
    - v. Date all Permits will be obtained
    - vi. Advertisement for Bids
    - vii. Bid Opening
    - viii. Construction Contract Award
    - ix. Pre-Construction Conference
    - x. Issuance of Notice-to-Proceed
    - xi. Substantial Completion Date
    - xii. Final Completion Date/Acceptance by Owner
  - c. Project Financial Plan: EDA funds will not be disbursed until all special award terms and conditions to the EDA Award are satisfied and all construction contracts are awarded. The plan must address how expenses will be paid prior to the disbursement of funds by EDA. The plan should explain who will be responsible for preparing payments requests to EDA.

- 23. OPERATION AND MAINTENANCE AGREEMENT:** If the Recipient intends to contract for the operation and maintenance of Award-acquired or -improved real property with another party, then such agreement for operation and maintenance of the Project must be consistent with and provide for compliance with all the terms, conditions and requirements of the EDA Award, including but not limited to nondiscrimination, environmental, and adequate consideration requirements. No disbursement shall be made under the Award until a copy of the executed operation and maintenance agreement, in form and substance satisfactory to EDA, has been provided to the EDA Project Officer by the Recipient. It is advisable for the Recipient to discuss such an arrangement in advance with the EDA Project Officer.
- 24. PROJECTS WITHIN STATE ROAD RIGHT-OF-WAY:** Recipients confirm and agree that (a) Recipients are committed during the Estimated Useful Life of the Project to operate, maintain and repair all improvements for the project consistent with this Award, and (b) if at any time during the Estimated Useful Life of the Project any or all of the improvements in the project within public highway(s) are relocated for any reason pursuant to requirements of the owner of the public highway, the Recipients shall be responsible for accomplishing the relocation, including as necessary expending the Recipients' own funds, so that the Project continues as authorized by this Award. Prior to soliciting bids for the improvements to be constructed with funds from this Award, Recipients shall submit to EDA all written authorization(s) (i.e. State permits) necessary for the Project to be constructed within the public highway. The authorization(s) shall have no time limits that restrict the use of the public highway for the Project during the Estimated Useful Life of the Project. It is determined and agreed that the Estimated Useful Life of this Project is 20 years.
- 25. EVIDENCE OF GOOD TITLE:** Prior to the initial disbursement of funds by EDA, the Recipient shall provide an opinion of counsel, satisfactory to EDA, that the Recipient has acquired good and marketable title to land, free of all encumbrances, to all real property necessary for completion of the project, as well as any necessary rights-of-way, easements, State or local government permits, or long-term lease interests necessary for the completion of the project, in accordance with 13 C.F.R. part 314.
- 26. NONRELOCATION:** By accepting this Award of financial assistance, the Recipient attests that the EDA-funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award (see 13 C.F.R. § 300.3). In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements, termination of the Award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project. EDA considers an employer to be a "primary beneficiary" if the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more permanent jobs so identified.



27. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leverage at three (3), six (6), and nine (9) years after an EDA investment. The Recipient must retain sufficient documentation so that they can submit these required reports. Failure to submit these reports may adversely impact the ability of the Recipient to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact the Recipient in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. The Recipient must ensure adequate and sufficient records are kept to support the methodology for computing initial job creation/retention and private investment estimates and all subsequent actual performance data, and must make this information available at EDA's request, including in the event of an audit or performance site visit.

28. **WASTE, FRAUD AND ABUSE:** Consistent with 2 CFR part 200, Recipient personnel responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees, will complete the training PowerPoint entitled "Compliance with EDA Disaster Assistance Program Requirements" and return the signed Certificate of Training Completion (page 36 of the training) to EDA along with the signed CD-450 within 30 days of receipt.

Further, Recipient will monitor award activities for common fraud schemes, such as:

- • false claims for materials and labor,
- • bribes related to the acquisition of materials and labor,
- • product substitution,
- • mismarking or mislabeling on products and materials, and
- • time and materials overcharging.

Should Recipient detect any suspicious activity, Recipient will contact EDA staff listed above and the Office of Inspector General, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

29. **REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient, or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, the Recipient hereby reaffirms and states that:

- i. All data in the application and documents submitted with the application are true and correct as of the date the application was submitted and remain true and correct as of the date of this Award;
- ii. The application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and
- iii. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the application.

The term “application” includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.