



**Sierra County Commission  
Sierra County Commission Chambers  
1712 N. Date Street, Truth or Consequences, NM 87901  
Monday, January 23, 2023**

ALL MEMBERS OF THE PUBLIC WILL BE ABLE TO WATCH AND LISTEN TO THE MEETING VIA:  
(facebook.com/SCEmergencyServices) (local radio KCHS 101.9 FM)

Call to Order: 10:00 AM Special Meeting

Roll Call: Travis Day-Vice-Chair  
James E Paxon-Vice Chair  
Hank Hopkins -Commissioner

Shelly K. Trujillo-Clerk  
Nance, Pato & Stout, LLC-Attorney  
Amber Vaughn-County Manager

Pledge of Allegiance

*New Mexico State Flag Pledge-I salute the flag of the State of New Mexico and the Zia symbol of perfect friendship among united cultures.*

**Introduction of Guests**

- I. **Approval of Agenda**
- II. **Approval of Minutes**
- III. **Public Comment: Limited to 3 Minutes**
- IV. **Consent Agenda:**
  - A. Claim of Exemption 23-001 James & Shara S. Montoya
- V. **Presentations/Reports:**
- VI. **New Business:**
- VII. **Contracts-Agreements-Procurement:**
  - A. Joint Powers Agreement (JPA) Between County of Sierra. County of Sierra Sheriff and Elephant Butte for Law Enforcement
  - B. Appropriation 22-G3021 Purchase and equip road equipment and heavy equipment for the county road department in Sierra County.
  - C. Appropriations 22-G3020 Plan, design, construct and equip a multipurpose event building, recreation vehicle park and perimeter fencing for the fairgrounds in Sierra County
- VIII. **Resolutions-Ordinances-Proclamations:**
  - A. Authorizing Legislative Appropriation Funding for Hiring of New Deputies, Providing for Recruitment & Retention Stipends

Next proposed Scheduled Meeting: Regular Meeting, Tuesday, February 21, 2023, at 10:00 AM. Items for the agenda must be submitted to the Sierra County Administration Office no later than 5:00pm on the Monday the week before the meeting.

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting please contact the Sierra County Manager, at 1712 N. Date Street, Truth or Consequences, New Mexico 87901, phone (575) 894-6215 at least one (1) week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Sierra County Manager if a summary or other type of accessible format is needed.



RECEIVED

JAN 11 2023

Form A

Sierra County Case No. 23-001

COUNTY of SIERRA

## CLAIM OF EXEMPTION

Claim of exemptions must be submitted on the form provided in this appendix to the Sierra County Subdivision Regulations. The language of this form shall not be altered in any way.

## CLAIM OF EXEMPTION INSTRUCTIONS

To claim an exemption from the requirements of the Sierra County Subdivision Ordinance, **you must complete this form, sign it before a notary public and submit it together with legible copies of all required documents and the non-refundable \$50.00 fee** to the Sierra County Development Coordinator, 1712 N. Date St., Ste. D, Truth or Consequences, New Mexico 87901. Be sure to check all exemptions which apply and **attach legible copies to all supporting documents. Failure to include all requested documentation will delay approval.**

The Development Coordinator will notify you in writing within forty-five (45) days as to whether your claim of exemption has been granted, denied or more information is needed. If the claim of exemption is granted, you will be notified that the original documentation is available at the Sierra County Administration. Property taxes for the prior year and current year must be paid prior to the documents being released to you for filing with the Sierra County Clerk. The original must be filed. If you wish to have the documents returned to an agent (surveyor, real estate agent, etc.) upon being granted please state the agent's name, telephone number, and mailing address in the appropriate space on this form. If you do not hear from the Development Coordinator within forty-five (45) days (DEEMED APPROVED FOR FAILURE TO ACT), you may proceed with the land division you propose without needing to comply with the requirements of the Sierra County Regulations. If your claim of exemption is denied, you may either seek approval of a subdivision or appeal the denial as provided in these Regulations.

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I/We, James Madona & SHARA S. Madona, claim an exemption from the requirements of the New Mexico Subdivision Act as amended and the Sierra County Subdivision Regulations as amended for the following reason(s) which I certify that this transaction involves:

- ☐ 1. The sale, lease or other conveyance of any parcel that is thirty-five (35) acres or larger in size within any twelve (12) month period, provided that the land has been used primarily and continuously for agricultural purposes, in accordance with § 7-36-20 NMSA 1978 as amended, for the preceding three (3) years. **Attach Certified Survey showing size and location of parcel and any retained parcel and copies of the proposed documents of conveyance and proof of tax payments being current.**
- ☐ 2. The sale or lease of apartments, offices, stores or similar space within a building. **Attach copies of proposed lease documents of conveyance and proof of tax payments being current.**



Claim of Exemption

- 1 -

- ☐ 3. The division of land in which only gas, oil, mineral or water rights are severed from the surface ownership of the land. **Attach copies of all proposed documents of conveyance, including lease(s). Proof of tax payments being current.**
- ☐ 4. The division of land created by court order where the order creates no more than one parcel per party. **Attach certified copy of court order. Also attach copies of the proposed documents of conveyance and certified survey showing size and location of parcels. Proof of tax payments being current.**
- ☐ 5. The division of land for grazing or farming activities provided that the land continues to be used for grazing or farming activities. **Attach copy of proposed documents of conveyance that restricts future use to grazing or farming activities. Proof of tax payments being current.**
- ☐ 6. The division of land resulting only in the alteration of parcel boundaries where parcels are altered for the purpose of increasing or reducing the size of contiguous parcels and where the number of parcels is not increased; or, the alteration results in a decrease in the number of parcels, so long as the newly created parcels do not exceed two (2) parcels. Approval of a merger/consolidation will be contingent upon compliance with building codes, land use regulations and other applicable ordinances or regulations in place or as amended. **Attach certified surveys showing all parcels and parcel boundaries before and after proposed alteration. Also attach documents of conveyance effecting the lot line adjustment(s) demonstrated on the surveys. Proof of tax payments being current.**
- ☐ 7. The division of land to create a parcel that is sold or donated as a gift to an immediate family member; however, this exception shall be limited to allow the seller or donor to sell or give no more than one parcel per tract of land per immediate family member. As used herein the term immediate family member means a husband, wife, father, stepfather, mother, stepmother, brother, stepbrother, sister, stepsister, son, stepson, daughter, stepdaughter, grandparents, grandson, step grandson, granddaughter, step granddaughter, nephew and niece, whether related by birth or adoption. This exemption may not be used to further divide a lot created under this exemption within five years of the date of the division of the original tract of land. Moreover exemption #11 may not be used to further divide a lot created under this exemption within five years of the date of the division of the original tract of land. **Attach copy of proposed documents conveyance and birth certificate, adoption certificate or other document demonstrating family relationship claimed. (BAPTISMAL CERTIFICATES ARE NOT ACCEPTABLE.) Also attach a certified survey plat showing the boundaries and size and location of the original tract or parcel and the size and location of the parcel proposed to be conveyed to the family member. Include the name of the family member on the parcel that is to be conveyed. Attached evidence of fair market value of the property. Also attach a copy of any purchase contract and mortgage, if applicable; and if the family member is a spouse, submit a separate property agreement or evidence of separate ownership of the parcel. Attach evidence that the transfer is, in whole or part, a *bona fide* gift (See Attachment "2"). Proof of tax payments being current.**



- ☐ 8. The division of land created to provide security for mortgages, liens or deeds of trust; provided that the division is not the result of a seller-financed transaction. **Attach copies of all financing documents. Also, attach copy of a certified survey showing the size and location of the original tract and the parcel that is being divided. That plat shall include an affidavit by the property owner declaring that any parcel created for security for mortgages, liens or deeds of trust, will be properly merged with the original parcel once the mortgage, liens or deeds of trust have been exonerated. Proof of tax payments being current.**
- ☐ 9. The sale, lease or other conveyance of land that creates no parcel smaller than one hundred forty (140) acres; **Attach certified survey showing location and size of parcel(s) to be conveyed and retained. Also attach copies of the documents of conveyance. Proof of tax payments being current.**
- ☐ 10. The division of land to create a parcel that is donated to any trust or non-profit corporation granted an exemption from federal income tax, as described in § 501 (C) (3) of the United States Internal Revenue Code of 1986, as amended; school, college or other institution with a defined curriculum and a student body and faculty that conducts classes on a regular basis; or to any church or group organized for the purpose of divine worship, religious teaching or other specifically religious activity. **Attach copies of IRS exemption letter, and/or documents demonstrating entitlement to exemption and certified survey showing land proposed to be donated. Also attach copies of the proposed documents of conveyance. Proof of tax payments being current.**
- ☒ 11. Division of a tract of land into two parcels that conform with applicable zoning ordinances; provided that a second or subsequent division of either of the two parcels within five years of the date of the division of the original tract of land shall be subject to the provisions of the New Mexico Subdivision Act; provided further that a survey, and a deed is a parcel is subsequently conveyed shall be filled with the County Clerk indicating that the parcel shall be subject to the provision of the New Mexico Subdivision Act if the parcel is further divided within five years of the date of the division of the original tract of land. **Attach certified survey showing size and location of original tract, parcel proposed to be divided, any parcels previously divided from the original parcel and dates of all divisions. Also attach copies of the proposed documents of conveyance. Proof of tax payments being current.**

**READ ATTACHMENT "1" HERETO REGARDING COMMON PROMOTIONAL PLAN**





►FEE: Fifty Dollars (\$50.00) per each Claim of Exemption

I further certify that the information provided by me in this Claim of Exemption is true and correct and that all documents attached to or enclosed with this Claim of Exemption are originals or true, complete and correct copies of the originals.

[Signature]  
Signature of Applicant/Owner(s)

James Montoya & Shara Salazar  
Print Name

Hc 31 Box 624  
Address

Caballo NM 87931  
City, State Zip

85 710 3035  
Telephone Number(s)

\_\_\_\_\_  
Signature of Person(s) Receiving Property

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

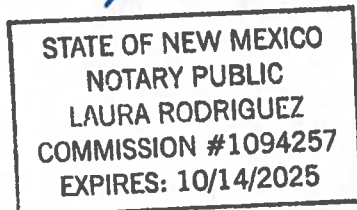
\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Telephone Number(s)

SUBSCRIBED AND SWORN to before me this 12 day of DECEMBER, 2020, by James P. Montoya & Shara Salazar, Applicant for Claim of Exemption.

(SEAL)



[Signature]  
Notary Public

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



If a copy of a certified survey is not required and does not accompany the Claim of Exemption, the exact legal description of the property involved must be included in the space below.

Legal Description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Return original documents to:

Name: Sharty Montoya  
Mailing Address: HC 31 Box 62A  
Caballo NM 87931  
Phone Number: 740 - 3035

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**FOR OFFICIAL USE ONLY**

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- ☐ The foregoing Claim of Exemption has been approved.
- ☐ The foregoing Claim of Exemption is incomplete. Please provide us with the following information and/or documents so that we can process your claim: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- ☐ The foregoing Claim of Exemption is hereby denied for the following reasons: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(NAME AND TITLE)

FEE PAID: \$ 50<sup>00</sup>  
DATE: 1/11/2023  
REC'D BY: KW

(Attach Copy of Sierra County Treasurer Receipt to this Application)



\*\*\*\*\*

CANDACE CHAVEZ  
SIERRA COUNTY TREASURER  
1712 N DATE ST ST B  
T OR C, NM 87901  
(575) 894-3524  
CCHAVEZ@SIERRACO.ORG  
WWW.SIERRACO.ORG

\*\*\*\*\*

RECEIPT # 59676

DATE 01/12/2023

BY-CINDY

TRSR

THE SIERRA COUNTY TREASURER HAS  
RECEIVED- 50.00

FROM- JAMES P MONTROYA

CLAIM OF EXEMPTION FEE

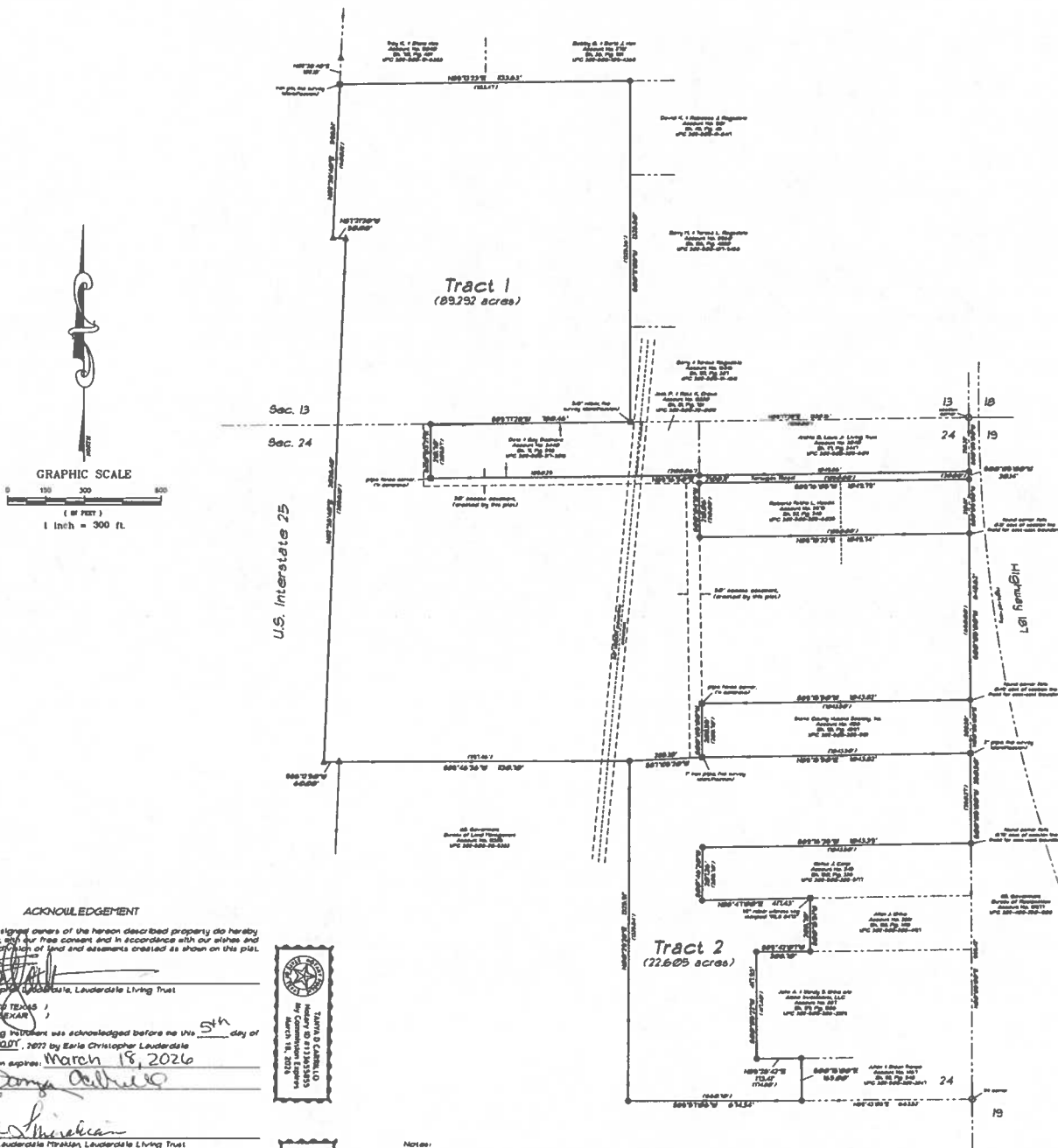
4010 1250

50.00

CASE NO. 23-001

RCVD CK #2465

**BOUNDARY SURVEY PLAT OF DIVISION**  
of a 111.918 acre tract into two tracts of land  
in the SW1/4 SE1/4 of Section 13 and the NE1/4 of Section 24,  
Township 14 South, Range 5 West, N.M.P.M.,  
south of the village of Williamsburg, Sierra County,  
New Mexico



**ACKNOWLEDGEMENT**

We, the undersigned owners of the herein described property do hereby acknowledge our free consent and in accordance with our wishes and desires, the division of land and easements created as shown on this plat.

*Erie Christopher Lauderdale Living Trust*  
STATE OF NEW MEXICO  
COUNTY OF BEHAR

The foregoing instrument was acknowledged before me this 5th day of December, 2021 by Erie Christopher Lauderdale  
My Commission expires: March 18, 2026

*James P. Montoya*  
Notary Public

*Allison Lee Lauderdale Miraklen Lauderdale Living Trust*  
STATE OF NEW MEXICO  
COUNTY OF BEHAR

The foregoing instrument was acknowledged before me this 5th day of December, 2021 by Allison Lee Lauderdale Miraklen  
My Commission expires: March 18, 2026

*James P. Montoya*  
Notary Public

*James P. Montoya*  
STATE OF NEW MEXICO  
COUNTY OF BEHAR

The foregoing instrument was acknowledged before me this 16 day of December, 2021 by James P. Montoya

*Laura Rodriguez*  
My Commission expires: 10/14/2025

*James P. Montoya*  
STATE OF NEW MEXICO  
COUNTY OF BEHAR

The foregoing instrument was acknowledged before me this 16 day of December, 2021 by James P. Montoya

*Laura Rodriguez*  
My Commission expires: 10/14/2025

*Laura Rodriguez*  
Notary Public

STATE OF NEW MEXICO  
NOTARY PUBLIC  
LAURA RODRIGUEZ  
COMMISSION #1094257  
EXPIRES: 10/14/2025

STATE OF NEW MEXICO  
NOTARY PUBLIC  
LAURA RODRIGUEZ  
COMMISSION #1094257  
EXPIRES: 10/14/2025

**Notes:**

These tracts are subject to easements, restrictions and reservations of record.  
The tracts shown herein are located within the boundaries of Flood Zone C, "Area of Minimal Flooding".

The herein described tracts do not constitute a subdivision as defined in the Sierra County Subdivision Regulations, and this division of land is being filed under the Claim of Exemption No. 1. The sale, lease or other conveyance of a single parcel from a tract of land, within any five year period provided that a second or subsequent sale, lease or other conveyance from the same tract of land within five years of the first sale shall be subject to the New Mexico Subdivision Act.

Basis of bearings is 20084, Geodetic North in ground distances based on GPS observations.  
Use drawing scale to determine measurements when not labeled.  
Record date is shown in parenthesis, ( )

There is a five year holding period on both the original tract and the newly created tract.

The 30' access easement, created by this plat, is subject to vacation when access is granted by Driveway Permits from the Bureau of Reclamation from Highway 91 right-of-way to Tract 2.

**Reference:**

Account No. 8955  
Book 13, Pages 3349-3350, Notice of Real Estate Conveyance  
UPC 307-969-70-8067

National Flood Insurance Program, Flood Insurance Rate Map Community Plan No. 330671 (FIRM) B, effective date: June 3, 1989; 1:330671 (FIRM) C, effective date: July 10, 1996.  
Sierra County Subdivision Regulations Ordinance Number 1-207, (repealed February 10, 2021)

June 28, 2022

**Chaparral Surveying, LLC**  
Professional Land Surveying

P.O. Box 675, Elephant Butte, New Mexico 87835

**CERTIFICATE**

This is to certify that I am a registered Professional Land Surveyor, that this plat is prepared from notes of field surveys made by me or under my supervision, that said survey and this plat are true and correct to the best of my knowledge and belief.  
I hereby certify that this survey is a final survey, but not a subdivision as defined herein.

This plat meets the ethical requirements of the Standards of Land Surveying in New Mexico.  
*James P. Montoya*  
Notary Public

INDEXING INFORMATION FOR COUNTY CLERK  
James P. & Shara S. Montoya c/o  
Lauderdale Living Trust, (1895)  
Sections 13 & 24  
Township 14 South, Range 5 West, N.M.P.M.



# Chaparral Surveying, LLC

P.O. Box 629

Elephant Butte, New Mexico 87935

(575) 740-0334

June 29, 2022

## LEGAL DESCRIPTION-TRACT 1

(89.292 ACRES)

A tract of land situate in the SW1/4 SE1/4 of Section 13 and the NE1/4 of Section 24, Township 14 South, Range 5 West, N.M.P.M., bounded on the west by the east right-of-way of U.S. Interstate 25, located south of the Village of Williamsburg, Sierra County, New Mexico, and more particularly described as follows, to-wit;

Beginning at an angle point in this tract, a 5/8" rebar w/aluminum tag stamped "NMPLS 12129", whence the NE corner of Section 24, Township 14 South, Range 5 West, a USGLO "brass-cap" monument, bears N89°17'28"E, a distance of 1320.16 feet;

Thence, S89°17'28"W, a distance of 780.46 feet to an angle point in this tract, a 1/2" rebar w/survcap stamped "NMPLS 12129";

Thence, S00°03'21"E, a distance of 210.70 feet to an angle point in this tract, a pipe fence corner w/aluminum tag stamped "NMPLS 12129";

Thence, N89°16'50"E, a distance of 2100.11 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473", a point on the east boundary of said Section 24;

Thence, continuing along said boundary, S00°05'00"W, a distance of 30.14 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, S89°16'05"W, a distance of 1049.79 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, S00°04'18"W, a distance of 210.06 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, N89°18'32"E, a distance of 1049.74 feet to an angle point in this tract, a point on the east boundary of said Section 24, whence a 5/8" rebar w/survcap stamped "RLS 8473" bears N89°18'32"E, a distance of 0.18 feet;

Thence, continuing along said boundary, S00°05'00"W, a distance of 648.62 feet to an angle point in this tract, whence a 5/8" rebar w/survcap stamped "RLS 8473" bears N89°15'50"E, a distance of 0.49 feet;

Thence, S89°15'50"W, a distance of 1043.82 feet to an angle point in this tract, a pipe fence corner in concrete;

**LEGAL DESCRIPTION-TRACT 1**

**(89.292 ACRES)**

**Page 2**

Thence, S00°05'00"W, a distance of 208.55 feet to an angle point in this tract, a 1" iron pipe w/aluminum tag stamped "NMPLS 12129";

Thence, S87°05'20"W, a distance of 285.10 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, S89°46'36"W, a distance of 1130.70 feet to an angle point in this tract, a NMSHTD "iron-rail" monument, a point on the east right-of-way of U.S. Interstate 25;

Thence, continuing along said right-of-way, S88°12'50"W, a distance of 60.00 feet to the SW corner of this tract, a NMSHTD "iron-rail" monument;

Thence, continuing along said right-of-way, N02°38'40"E, a distance of 2038.40 feet to an angle point in this tract, a NMSHTD "iron-rail" monument;

Thence, continuing along said right-of-way, N87°21'20"W, a distance of 50.00 feet to an angle point in this tract, a NMSHTD "iron-rail" monument;

Thence, continuing along said right-of-way, N02°38'40"E, a distance of 598.51 feet to the NW corner of this tract, an iron pin w/aluminum tag stamped "NMPLS 12129";

Thence, N89°13'23"E, a distance of 1133.63 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, S00°11'08"W, a distance of 1325.50 feet to the point of beginning of the tract hereon described, containing 89.292 acres of land, more or less.

This legal description was prepared from a field survey by David M. Senn, NMPLS 12129, (Chaparral Surveying, LLC, Boundary Survey Plat of Division dated June 28, 2022).

# Chaparral Surveying, LLC

P.O. Box 629  
Elephant Butte, New Mexico 87935  
(575) 740-0334

June 29, 2022

## **LEGAL DESCRIPTION-TRACT 2** (22.605 ACRES)

A tract of land situate in the NE1/4 of Section 24, Township 14 South, Range 5 West, N.M.P.M., located south of the Village of Williamsburg, Sierra County, New Mexico, and more particularly described as follows, to-wit;

Beginning at the NE corner of this tract, a 2" pipe w/aluminum tag stamped "NMPLS 12129", a point on the east boundary of Section 24, Township 14 South, Range 5 West, whence the NE corner of said Section 24, a USGLO "brass-cap" monument, bears N00°05'00"E, a distance of 1308.44 feet;

Thence, continuing along said boundary, S00°05'00"W, a distance of 350.50 feet to an angle point in this tract, whence a 5/8" rebar w/survcap stamped "RLS 8473" bears N89°16'35"E, a distance of 0.79 feet, also whence the east ¼ corner of said Section 24, a USGLO "brass-cap" monument, bears S00°05'00"W, a distance of 1349.92 feet;

Thence, S89°16'35"W, a distance of 1043.39 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, S00°46'30"W, a distance of 207.26 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, N88°47'00"E, a distance of 417.43 feet to an angle point in this tract, a ½" rebar w/brass tag stamped "RLS 8473";

Thence, S00°15'51"W, a distance of 208.70 feet to an angle point in this tract, a ½" rebar w/survcap stamped "NMPLS 12129";

Thence, S89°42'07"W, a distance of 208.70 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, S00°05'22"W, a distance of 417.93 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, N89°28'42"E, a distance of 173.41 feet to an angle point in this tract, a ½" rebar w/survcap stamped "NMPLS 12129";

Thence, S00°15'00"E, a distance of 165.00 feet to an angle point in this tract, a 5/8" rebar w/survcap stamped "RLS 8473", whence the east ¼ corner of said Section 24, a USGLO "brass-cap" monument, bears N89°43'03"E, a distance of 663.52 feet;

**LEGAL DESCRIPTION-TRACT 2**

**(22.605 ACRES)**

**Page 2**

Thence, S89°57'06"W, a distance of 674.34 feet to the SW corner of this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, N00°29'28"E, a distance of 1325.91 feet to the NW corner of this tract, a 5/8" rebar w/survcap stamped "RLS 8473";

Thence, N87°05'20"E, a distance of 285.10 feet to an angle point in this tract, a 1" iron pipe w/aluminum tag stamped "NMPLS 12129";

Thence, N89°15'50"E, a distance of 1043.82 feet to the point of beginning of the tract hereon described, containing 22.605 acres of land, more or less.

This legal description was prepared from a field survey by David M. Senn, NMPLS 12129, (re: Chaparral Surveying, LLC, Boundary Survey Plat of Division dated June 28, 2022).

Sec. 13

Sec. 24

U.S. Interstate 25

N02°38'40"E 2038.40'  
(2038.40')

S88°12'50"W  
60.00'

U.S. Government  
Bureau of Land Management  
Account No. 18336  
UPC 302-508-213-3333

S89°17'28"W 780.46'  
Dale & Gay Shickore  
Account No. 3440  
Bk. 11, Pg. 593  
UPC 302-508-217-3013

pipe fence corner,  
(in concrete)

30' access easement,  
(created by this plat)

5/8" rebar, (no  
survey identification)

Jack P. & Rita K. Grouse  
Account No. 13370  
Bk. 11, Pg. 731  
UPC 302-508-217-0002

Berry & Teresa Regedale  
Account No. 16316  
Bk. 12, Pg. 287  
UPC 302-508-111-4912

N89°17'28"E 1320.16'  
(1320.00')

Archie B. Lewis Jr. Living Trust  
Account No. 2040  
Bk. 11, Pg. 2447  
UPC 302-508-209-0011

N89°16'50"E 2120.11'

Tortugas Road

Roberta Faith L. Hewett  
Account No. 3975  
Bk. 92, Pg. 248  
UPC 302-508-209-0035

N89°18'32"E 1049.74'

pipe fence corner,  
(in concrete)

S89°15'50"W 1043.82'  
(1043.50')

Sierra County Museum Society, Inc.  
Account No. 486  
Bk. 95, Pg. 4997  
UPC 302-508-209-9121

1" iron pipe, (no survey  
identification)

N89°15'50"E 1043.82'  
(1043.50')

S89°16'35"W 1043.39'  
(1043.50')

Walter J. Corp  
Account No. 845  
Bk. 120, Pg. 336  
UPC 302-508-200-9177

N88°47'00"E 417.43'  
1/2" rebar w/ brass tag  
stamped "RLS 8413"

Allen J.  
Account  
Bk. 156, I  
UPC 302-508

Tract 2  
(22.605 acres)

John A. & Wendy S. White c/o  
Alamo Investments, LLC  
Account No. 837  
Bk. 123, Pg. 1336  
UPC 302-508-206-3228

N89°28'42"E 173.41'  
(174.20')

S00°15'00"E 165.00'

Julian & E  
Account  
Bk. 12  
UPC 302-508

S89°51'06"W 674.34'

N89°43'03"E



TANYA D CARRILLO  
Notary ID #13655855  
My Commission Expires  
March 18, 2026

**CLAIM OF EXEMPTION 23-001**

**SIGNATURE PAGE**

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
COMMISSION CHAIRMAN DATE

\_\_\_\_\_  
COMMISSION VICE CHAIRMAN DATE

\_\_\_\_\_  
COMMISSION MEMBER DATE

**PLANNING DEPARTMENT**

  
\_\_\_\_\_  
PLANNING COORDINATOR DATE

**ATTEST:**

\_\_\_\_\_  
COUNTY CLERK DATE



**JOINT POWERS AGREEMENT  
COUNTY OF SIERRA, COUNTY OF SIERRA SHERIFF  
AND CITY OF ELEPHANT BUTTE  
PROVISION OF LAW ENFORCEMENT SERVICES  
FOR CITY OF ELEPHANT BUTTE**

**WHEREAS**, Sierra County ("County"), Sierra County Sheriff ("Sheriff") and the City of Elephant Butte ("City") are public agencies and are authorized by the New Mexico Joint Powers Agreement Act, Sections **11-1-1** et seq., NMSA 1978, to enter into this Agreement ("Agreement"), and

**WHEREAS**, the parties have entered into a Contract Agreement for Services as of APRIL 20, 2022; and

**WHEREAS**, Sheriff is empowered by Section 4-41-2 NMSA 1978 to conserve the peace throughout the County, and

**WHEREAS**, Sheriff maintains and operates equipment and employs certified personnel sufficient to provide law enforcement services for the County and the City; and

**WHEREAS**, the City desires to authorize the county to utilize funds that it receives from the New Mexico Law Enforcement Protection Fund ("LEPF") for the benefit of Sheriff for the restricted and express purposes of providing training and other law enforcement activities as are authorized by the provisions of the New Mexico Law Enforcement Protection Fund Act, NMSA 1978, §§ 29-13-1 et seq. ("Act"); and

**WHEREAS**, the parties wish to amend the existing Contract Agreement for Services in order to identify it as a Joint Powers Agreement and to add a provision for the contribution of an additional Thirty Thousand Dollars (\$30,000) by City to offset additional expenses associated with providing trained and certified personnel which LEPF monies may not be utilized for; and

**WHEREAS**, in consideration of the funds received, Sheriff desires to provide trained and certified personnel, equipment, and law enforcement protection for the citizens of the City of Elephant Butte as well as those of the County.

**NOW THEREFORE**, for and in consideration of the premises and covenants contained herein, the parties agree for the provision of law enforcement services to City as follows:

**1. Purpose.** The purposes for this Agreement are:

- A. To provide law enforcement protection and services by County to the City of Elephant Butte, its' residents, and visitors; and

- B. To provide funds available to City from the New Mexico Law Enforcement Protection Fund to County, together with the additional Thirty Thousand Dollars (\$30,000) from City.
2. **Power Granted.** The power common to each party that is being exercised pursuant to this agreement is the power to enforce the law which is granted the City and the Sheriff by state constitution and statute.
  3. **Sheriff's Duties.** The Sheriff shall be the agency to exercise the law enforcement power within the City pursuant to this agreement. Sheriff shall provide services in accordance with all applicable federal, state, and local laws, rules, regulations, and ordinances. Sheriff shall exercise discretion in the performance of his duties as is required by adherence to the laws, rules, regulations, and ordinances, and to the same standards as are generally recognized within the State of New Mexico for similar positions. Sheriff shall not be subject to the control or direction of City or City's officials in the exercise of Sheriff's duties pursuant to this Agreement, except as authorized in Section 14, "Termination," herein.
  4. **Sheriffs Authority.** The City and the County are political subdivisions of the state, and the Sheriff is a locally elected law enforcement officer with jurisdiction throughout the County. The Sheriff or any of his deputies is authorized and deputized by the City to conduct all law enforcement activities within the City as if they were municipal police officers and shall in addition to their powers as Sheriff and Sheriff's deputies have all the powers of municipal officers and shall have the authority to enforce the municipal ordinances of the City of Elephant Butte.
  5. **Administering Agency.** There shall be no separate entity created by this Agreement. Sheriff shall be responsible for administering the law enforcement provisions of this Agreement, and all employees engaged in the Sheriff's services hereunder shall be employees of County.
  6. **Fiscal Agent.** The City shall serve as the fiscal agent for purposes of administration of this Agreement, and the county shall provide strict accountabilities for all receipts and disbursement of funds pursuant to the Agreement. County shall comply with all provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-1 et seq., in making purchases with any funds provided by City.
  7. **Reports.** Sheriff shall provide City a monthly summary report of incidents, responses, nature of the calls, arrests, detentions, and other law enforcement services provided to City under this agreement.

8. **Liability.** Each party shall be liable for its' own acts or failures to act in accordance with this Agreement, with the provisions of the Privileges, Immunities, Exemptions, and Benefits provisions of the Joint Powers Act, **Nv1** SA 1978, § 11-1-6, and subject to the immunities and limitations of the New Mexico Tort Claims Act, NM SA 1978, §§ 41-4-1 et seq.

9. **City Code Violations.** All violation of the traffic and /or criminal code of the City of Elephant Butte will be referred to the 7<sup>th</sup> JudicialM agistrate Court.

10. **Compensation by City.**

A. **IEP F Funds.** City shall be responsible annually for the funds that it receives for that fiscal year from the Fund, as may be modified by the state from time to time. At the time of executing this Agreement, the Law Enforcement Protection Fund Act provides at NMSA 1978, § 29-13-4 that the amount available to City from the Fund is Forty-Five Thousand Dollars (\$45,000.00) per year. City shall notify County at any time that it anticipates receiving a different amount from the Fund, and County shall modify its' budget accordingly annually upon receipt by City.

B. **Additional Funds.** County shall annually submit to City the projected budget requirements for providing services as described herein to City for the next fiscal year. The submission must be prior to June 1st in order for City to consider the request when preparing its' budget for the next fiscal year. City shall notify county, if any of the additional Thirty Thousand Dollars (\$30,000) cannot be budgeted and made available to County in addition to the LEPF monies for the services provided herein.

C. **Non-Appropriations.** City's annual payment shall be subject to appropriation by City's Governing Body.

D. **Use of LEPFF unds.** County shall use the LEPF funds only for the purposes permitted by the terms of the Law Enforcement Protection Fund Act, as identified in Section 29-13-7, as may be amended from time to time, and shall save and hold harmless City, its' officers, employees, and agents, from liability for any wrongful expenditure as may be found pursuant to the provisions of NMSA 1978, § 29-13-9.

11. **Term.** This Agreement will become effective upon execution by the parties and approval by the New Mexico Department of Finance and Administration and shall remain in effect until terminated as provided herein. Any change in elected officials of either City, County, or Sheriff who are signatories to this agreement shall not require an amendment to the agreement, which shall remain in full force and effect.

**12. Termination.** This Agreement may be terminated or suspended as follows:

- A. By either party upon thirty (30) days written notice.
- B. The Mayor of City or a majority of the members of the City of Elephant Butte City Council may immediately suspend this Agreement at any time upon a finding by the Mayor or Council of an emergency situation that presents an immediate danger to the public health, safety, and welfare of the municipality or its' residents or visitors. Said suspension shall remain in effect until rescinded by the Governing Body of City, or until this Agreement is terminated by either party.

**13. Disposition of Property Upon Termination.**

- A. Any personal property acquired as a result of the joint exercise of powers under this agreement shall become and remain the property of the County.
- B. Surplus funds on hand shall remain the responsibility of the City upon termination.

**14. Severability.** If any part of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect so long as the purposes of the Agreement may be fulfilled.

**15. Entire Agreement.** This agreement constitutes the entire agreement among the parties and supersedes all existing agreements concerning the same subject matter.

**16. Amendment.** This agreement may only be amended in writing pursuant to the terms of the Joint Powers Act.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement as of the dates set forth opposite the signatures of their authorized representatives, to be effective for all purposes upon approval by the New Mexico Department of Finance and Administration.

CITY OF ELEPHANT BUTTE:

COUNTY OF SIERRA:

\_\_\_\_\_  
Phillip Mortensen, Mayor

\_\_\_\_\_  
Travis Day, Chair  
Board of Commissioners

ATTEST:

SIERRA COUNTY SHERIFF:

\_\_\_\_\_  
John Mascaro Newberry, City Clerk

\_\_\_\_\_  
Joshua Baker, Sheriff

ATTEST:

\_\_\_\_\_  
Shelly Trujillo, Sierra County Clerk

APPROVED:

Secretary of Finance and Administration, State of New Mexico

By: \_\_\_\_\_  
Department of Finance & Administration

Date: \_\_\_\_\_, 2023

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered by the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **Sierra County**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2022, Chapter 53, Section 30, Paragraph 409, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**22-G3021      \$300,000.00    APPROPRIATION REVERSION DATE: June 30, 2024**  
**Laws of 2022, Chapter 52, Section 30, Paragraph 409, Three Hundred Thousand Dollars and Zero Cents (\$300,000.00), to purchase and equip road equipment and heavy equipment for the county road department in Sierra county;**



The Grantee's total reimbursements shall not exceed Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>43</sup>, if applicable, Zero Dollars and Zero Cents (\$0.00), which equals Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>44</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

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

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<sup>43</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

<sup>44</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: Sierra County  
Name: Amber Vaughn  
Title: County Manager  
Address: 1712 N. Date, Suite D, Truth or Consequences, NM, 87901  
Email: [avaughn@sierraco.org](mailto:avaughn@sierraco.org)  
Telephone: 575-740-7105

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: Sierra County  
Name: Amber Vaughn  
Title: County Manager  
Address: 1712 N. Date, Suite D, Truth or Consequences, NM, 87901  
Email: [avaughn@sierraco.org](mailto:avaughn@sierraco.org)  
Telephone: 575-740-7105

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division  
Name: Ariana Vigil  
Title: Program Manager  
Address: Bataan Memorial Bldg. Room 202, Santa Fe, NM 87501  
Email: [Arianam.Vigil@dfa.nm.gov](mailto:Arianam.Vigil@dfa.nm.gov)  
Telephone: 505-470-7041

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2024**, the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

### **C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

## **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

### **D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database Reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

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

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

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

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

**C. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.



D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

A. The following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
- (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

## **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

## **ARTICLE XIII. LIABILITY**

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

## **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

## **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **Sierra County** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **Sierra County's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **Sierra County** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **Sierra County** or the Department."

## **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the **Sierra County** may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **Sierra County** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

## **XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

## **ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the

SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

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

Its: Division Director

\_\_\_\_\_  
Date



**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip  
C. Contact Name/Phone #: \_\_\_\_\_  
D. Grant No: \_\_\_\_\_  
E. Project Title: \_\_\_\_\_  
F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Payment Request No. \_\_\_\_\_  
B. Grant Amount: \_\_\_\_\_  
C. AIPP Amount (If Applicable): \$ 0.00  
D. Funds Requested to Date: \$ 0.00  
E. Amount Requested this Payment: \_\_\_\_\_  
F. Reversion Amount (If Applicable): \$ 0.00  
G. Grant Balance: \$ 0.00  
H. ☐ GF ☐ GOB ☒ STB (attach wire if first draw)  
I. ☐ Final Request for Payment (if Applicable)

**III. Fiscal Year :** 2023 (July 1, 2022-June 30, 2023)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV. ☐ Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

**V. ☐ Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer  
or Fiscal Agent (if applicable)**

\_\_\_\_\_  
**Grantee Representative**

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

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

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

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

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
Division Fiscal Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Project Manager

\_\_\_\_\_  
Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee # \_\_\_\_\_

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

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_ Project Manager

FROM: Grantee Entity: \_\_\_\_\_

Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_ \$ 0.00

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_ Project Manager

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

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

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered by the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **Sierra County**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2022, Chapter 53, Section 30, Paragraph 408, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

**22-G3020      \$1,750,000.00      APPROPRIATION REVERSION DATE: June 30, 2026**  
**Laws of 2022, Chapter 52, Section 30, Paragraph 408, One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00), to plan, design, construct and equip a multipurpose events building, recreation vehicle park and perimeter fencing for the fairground in Sierra county;**

The Grantee's total reimbursements shall not exceed One Million Seven Hundred Fifty Thousand Dollars and Zero Cents (\$1,750,000.00) to (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>41</sup>, if applicable, Seventeen Thousand Five Hundred Dollars and Zero Cents (\$17,500.00), which equals One Million Seven Hundred Thirty Two Thousand Five Hundred Dollars and Zero Cents (\$1,732,500.00) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>42</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

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

<sup>41</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

<sup>42</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
- c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
- d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

### **ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: Sierra County  
Name: Amber Vaughn  
Title: County Manager  
Address: 1712 N. Date, Suite D, Truth or Consequences, NM, 87901  
Email: [avaughn@sierraco.org](mailto:avaughn@sierraco.org)  
Telephone: 575-740-7105

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: Sierra County  
Name: Amber Vaughn  
Title: County Manager  
Address: 1712 N. Date, Suite D, Truth or Consequences, NM, 87901  
Email: [avaughn@sierraco.org](mailto:avaughn@sierraco.org)  
Telephone: 575-740-7105

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division  
Name: Ariana Vigil  
Title: Program Manager  
Address: Bataan Memorial Bldg. Room 202, Santa Fe, NM 87501  
Email: [Arianam.Vigil@dfa.nm.gov](mailto:Arianam.Vigil@dfa.nm.gov)  
Telephone: 505-470-7041

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2026**, the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

## **ARTICLE V. EARLY TERMINATION**

### **A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

### **B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

### **C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

## **ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

### **D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

## **ARTICLE VII. AMENDMENT**

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

## **ARTICLE VIII. REPORTS**

### **A. Database Reporting**

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.



Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

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

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

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

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

**C. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

#### **ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES**

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

## **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

## **ARTICLE XIII. LIABILITY**

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

## **ARTICLE XIV. SCOPE OF AGREEMENT**

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

## **ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **Sierra County** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **Sierra County's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **Sierra County** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **Sierra County** or the Department."

## **ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the **Sierra County** may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **Sierra County** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

## **XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.**

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

## **ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the

SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

**IN WITNESS WHEREOF**, the parties have duly executed this Agreement as of the date of execution by the Department.

**GRANTEE**

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

\_\_\_\_\_  
Entity Name

By: \_\_\_\_\_  
(Type or Print Name)

Its: \_\_\_\_\_  
(Type or Print Title)

\_\_\_\_\_  
Date

**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

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

Its: Division Director

\_\_\_\_\_  
Date

**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

A. Grantee: \_\_\_\_\_  
B. Address: \_\_\_\_\_  
(Complete Mailing, including Suite, if applicable)  
\_\_\_\_\_  
City, State, Zip  
C. Contact Name/Phone #: \_\_\_\_\_  
D. Grant No: \_\_\_\_\_  
E. Project Title: \_\_\_\_\_  
F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

A. Payment Request No. \_\_\_\_\_  
B. Grant Amount: \_\_\_\_\_  
C. AIPP Amount (If Applicable): \$ 0.00  
D. Funds Requested to Date: \$ 0.00  
E. Amount Requested this Payment: \_\_\_\_\_  
F. Reversion Amount (If Applicable): \$ 0.00  
G. Grant Balance: \$ 0.00  
H. ☐ GF ☐ GOB ☒ STB (attach wire if first draw)  
I. ☐ Final Request for Payment (if Applicable)

**III. Fiscal Year :** 2023 (July 1, 2022-June 30, 2023)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV. ☐ Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

**V. ☐ Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer  
or Fiscal Agent (if applicable)**

\_\_\_\_\_  
**Grantee Representative**

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

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

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

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

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
Division Fiscal Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Project Manager

\_\_\_\_\_  
Date



**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee # \_\_\_\_\_

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

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_ Project Manager

FROM: Grantee Entity: \_\_\_\_\_

Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_ \$ 0.00

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_ Project Manager

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

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

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.



## **SIERRA COUNTY**

### **RESOLUTION 110-141**

#### **AUTHORIZING LEGISLATIVE APPROPRIATION FUNDING FOR HIRING OF NEW DEPUTIES, PROVIDING FOR RECRUITMENT & RETENTION STIPENDS**

**WHEREAS**, the Board of County Commissioners of Sierra County, met upon notice of a duly published Business meeting February 21, 2023, at 10:00 A.M. in the Sierra County Administration Building, 1712 N. Date Street, Truth or Consequences, NM 87901; and,

**WHEREAS**, NMSA 1978, Section 3-18-1 (1972) provides that municipalities have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

**WHEREAS**, NMSA 1978, Section 3-17-1 *et seq.* (1990) provides that municipalities may adopt laws not inconsistent with the laws of New Mexico for the purpose of providing for the safety, preserving the health, promoting the prosperity and improving the morals, order, comfort and convenience of the municipality and its inhabitants; and,

**WHEREAS**, Joshua Baker is the duly elected Sheriff of Sierra County with the authority to appoint and direct deputies pursuant to NMSA 1978, Section 4-41-5 (1975) to perform the duties of said office; and,

**WHEREAS**, NMSA 1978 Section 4-38-19 (A) (1973) provides in part that, “[a] board of county commissioners may set the salaries of such employees and deputies as it feels necessary to discharge the functions of the county. . .;” and,

**WHEREAS**, NMSA 1978, Section 4-41-6 (1975) provides that “[e]ach county is authorized and empowered to establish by ordinance a merit system for the hiring, promotion, discharge and general regulation of the deputies and the employees of the county sheriff’s office. The ordinance may, in the discretion of the board of county commissioners, provide for the classification of deputies and other employees and their probationary periods, service ratings, pay scales and ranges, the number of hours of work per week and the methods of employment, promotion, demotion and discharge of such deputies and employees within the limits provided by law;” and,

**WHEREAS**, the Board has adopted a merit system ordinance, the Sierra County Personnel Policy; and,

**WHEREAS**, Article IV, Section 27; [n]o law shall be enacted giving any extra compensation to any public officer, servant, agent or contractor after services are rendered or contract made; nor shall the compensation of any officer be increased or diminished during his term of office, except otherwise provided in this constitution; and,

**WHEREAS**, the NM Attorney General's Opinion dated June 4, 2004 explains that while retroactive "bonuses" are unconstitutional, the constitution does not preclude a public employer from considering its employees' past performance and years of service when deciding how to compensate them, as long as the employees are paid in return for future services; and,

**WHEREAS**, according to a 2020 survey by the National Police Foundation, 86% of departments reported a staffing shortage and the Sierra County Sheriff's Office has experienced this shortage; and,

**WHEREAS**, the 52nd Legislature during the 2022 Regular Session passed HB 68, signed into law by the Governor, establishes the "law enforcement training and recruiting fund" and states that "the department of finance and administration shall establish a program to distribute funds for local law enforcement agencies to provide recruitment and retention stipends to law enforcement officers;" and,

**WHEREAS**, HB 68 provides that "[t]he program shall also establish appropriate guidelines on the use of those funds, including recruitment and retention stipends that may be distributed to:

- A. a person who is not certified as a law enforcement officer pursuant to the Law Enforcement Training Act upon employment with a law enforcement agency; provided that the recipient successfully obtains such certification;
- B. a person who is certified as a law enforcement officer pursuant to the Law Enforcement Training Act upon employment with a law enforcement agency; provided that the recipient remains employed with that agency for three months; and
- C. a person who is certified as a law enforcement officer pursuant to the Law Enforcement Training Act currently employed by a law enforcement agency; provided that the law enforcement officer remains employed with that law enforcement officer's current agency for one additional year;" and,

**WHEREAS**, the Sierra County Sheriff's Office received appropriation number 22-ZG1016-24 from DFA pursuant to HB 68 in the amount of \$131,250.00 with a reversion date of June 23, 2023;" and,

**WHEREAS**, Sierra County is a wonderful place to live, work and raise a family, and in recognition of that the Sheriff and Commission believe a hiring providing a hiring incentive pay program will attract new employees to be members of the community and serve the public; and

**WHEREAS**, this resolution is adopted to establish a program for the use of the HB 68 Funding.

**NOW THEREFORE**, be it resolved by the Board of County Commissioners that the following Sierra County Law Enforcement Recruitment & Retaining Program:

**I. HIRING BONUS**

Each individual hired may receive as follows:

- A. \$6,818.00 for a person who is certified as a law enforcement officer pursuant to the Law Enforcement Training Act upon employment with the Sheriff's Office provided that the recipient successfully obtains such certification and remains employed with the Sheriff's Office for one year.
- B. Each employee that has received a hiring bonus pursuant to House Bill 68 is required to return the funds in the event he or she does not complete one year of employment with the Sierra County Sheriff Office.

## II. RETENTION STIPEND

Each certified deputy who commits to remains employed with the Sheriff's Office for one additional year may receive as follows:

- A. \$6818.00 for each deputy who is certified as a law enforcement officer pursuant to the Law Enforcement Training Act currently employed by the Sheriff's Office; provided that the deputy remains employed with the Sheriff's Office for one additional year.
- B. Each employee having received a retention stipend pursuant to House Bill 68 is required to return the funds in the event he or she does not complete one additional year of employment with the Sierra County Sheriff Office.

**NOW THEREFORE BE IT FURTHER RESOLVED**, by the Board of County Commissioners that this program will end upon the earlier of the expenditure of the Law Enforcement Training and Recruiting Fund or June 23rd, 2023.

**PASSED, APPROVED AND RESOLVED THIS 21<sup>st</sup> DAY OF FEBRUARY 2023.**

**BOARD OF COUNTY COMMISSIONERS**

\_\_\_\_\_  
Travis Day, Chair

\_\_\_\_\_  
James Paxon, Commissioner

\_\_\_\_\_  
Hank Hopkins, Commissioner

Attest:

\_\_\_\_\_  
Shelly K. Trujillo  
Sierra County Clerk

**SHERIFF**

\_\_\_\_\_  
Joshua Baker, County Sheriff

\_\_\_\_\_  
Date