



AGENDA

REGULAR MEETING OF
THE QUALITY OF LIFE
COMMITTEE
OCTOBER 05, 2022
5:00 PM
COUNCIL CHAMBERS
CITY HALL
200 LINCOLN AVENUE

PROCEDURES FOR QUALITY OF LIFE COMMITTEE MEETING

Viewing: Members of the public may stream the meeting live on the City of Santa Fe's YouTube channel at <https://www.youtube.com/user/cityofsantafe>. The YouTube live stream can be accessed at this address from most smartphones, tablets, or computers.

Written Public Comment: Members of the public may submit written comments on legislation by clicking on the comment bubble to the right of the meeting on the public portal at <https://santafe.primegov.com/public/portal> three hours prior to the start of the meeting.

The agenda and packet for the meeting will be posted at <https://santafe.primegov.com/public/portal>.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF AGENDA**
4. **APPROVAL OF CONSENT AGENDA**
5. **PRESENTATIONS**

- a. Leveraging the Outdoor Recreation Movement: The opportunity to merge diverse resources into a sustainable and long term economic develop driver and market (Erick Aune, Santa Fe MPO Office: ejaune@santafenm.gov, 505-955-666)
- b. MIDTOWN PROGRESS REPORT: Updates on Midtown Redevelopment Plans (Daniel Hernandez, Redevelopment Project Manager, Proyecto; Rich Brown, Director of Community Development Department: rdbrown@santafenm.gov, 505-955-6625;)

6. **ACTION ITEMS: CONSENT**

- a. Approval of Minutes for the September 21, 2022 Quality of Life Committee Meeting (Loretta Olguin, Business Operations Manager: lsolguin@santafenm.gov, 505-955-6334)

Committee Review:

Quality of Life Committee: 10/5/2022

- b. Request for Approval of Lease Agreement Between the City of Santa Fe and Presbyterian Medical Services, Inc. for 1121 Alto Street, Santa Fe, NM, Located on the City’s Bicentennial Alto Park Property. (Terry J. Lease, Asset Development Manager, tjlease@santafenm.gov, 505-629-2206)

Committee Review:

Finance Committee: 10/03/22

Quality Life Committee: 10/05/22

Public Works and Utilities Committee: 10/11/22

Economic Development Advisory Committee: 10/12/22

Governing Body: 10/26/22

- c. Request for Approval of Real Estate Donation Agreement to Convey the Property Located at 635 Alto Street from the City to Habitat for Humanity for the Purposes of Developing Five (5) Low-Priced Dwelling Units (LPDU) for Sale to Income-Qualified Homebuyers. (Alexandra Ladd, Office of Affordable Housing, Director: agladd@santafenm.gov; and Terry Lease, Office of Economic Development, Asset Development Manager: tjlease@santafenm.gov, 505-629-2206).

Committee Review:

Public Works & Utility Committee: 9/26/2022

Finance Committee: 10/03/2022

Quality of Life Committee: 10/05/22

Governing Body: 10/12/2022

- d. Request for Approval of Art in Public Places Purchase Contract with the State of New Mexico Department of Cultural Affairs, New Mexico Arts Division and Christina Marie Gonzalez dba Christina Gonzalez Studio for the Display of Artwork on City Property with the City's Portion in the Total Amount of \$4300. (Pauline Kanako Kamiyama, Arts and Culture Division Director: pkkamiyama@santafenm.gov, 505-955-6653)

Committee Review:

Quality of Life Committee 10/05/2022

Finance Committee 10/17/2022

Governing Body 10/19/2022

- e. Request for Approval of a Termination Agreement with Descartes Labs, Inc. and Associated LEDA Funding Claw Back (Casey Dalbor, Business Growth Manager: cjdalbor@santafenm.gov, 505-955-6912; Andréa Salazar, Assistant City Attorney, asalazar@santafenm.gov, 505-955-6303; Rich Brown, Community and Economic Development Director: rdbrown@santafenm.gov, 505-955-6625).

Committee Review

Finance Committee: 10/03/2022

Quality of Life: 10/05/2022

Economic Development Advisory Committee: 10/12/2022

Governing Body: 10/12/2022

- f. CONSIDERATION OF BILL NO. 2022-___. (Councilor Lindell, Mayor Webber, Councilor Chavez)
An Ordinance Amending Section 12-10-1.10 of the Uniform Traffic Ordinance Governing Mufflers and Emission Control Devices; and Amending Schedule A of the Uniform Traffic Ordinance to Increase Penalties for Muffler Noise Violations. (Matthew Champlin, Deputy Chief of Police: mrchamplin@santafenm.gov, 955-5201)

Committee Review:

Governing Body (Introduced): 09/14/2022

Governing Body (Public Comment): 09/28/2022

Quality of Life Committee: 10/05/22

Public Works and Utilities Committee: 10/11/2022

Finance Committee: 10/17/2022

Governing Body (Public Hearing): 10/26/2022

7. **MATTERS FROM STAFF**
8. **MATTERS FROM THE COMMITTEE**
9. **MATTERS FROM THE CHAIR**
10. **NEXT MEETING: Wednesday, October 19, 2022**
11. **ADJOURN**

Persons with disabilities in need of accommodations, contact the City Clerk's office at 955-6521, five (5) working days prior to meeting date.



MINUTES

REGULAR MEETING OF
THE QUALITY OF LIFE
COMMITTEE
SEPTEMBER 21, 2022
5:00 PM
VIRTUAL MEETING

1. CALL TO ORDER

The meeting of the Quality of Life Committee was called to order by Chair, Councilor Cassutt, at 5:00 pm on Wednesday, September 21, 2022, in the City Council Chambers.

2. ROLL CALL

Members Present:

Councilor Amanda Chavez
Councilor Lee Garcia
Councilor Michael Garcia
Councilor Jamie Cassutt
Councilor Renee Villarreal

Members Excused:

None

Others Attending:

Kyra Ochoa, Community Services Department Director
Loretta Olguin, Clerk
Elizabeth Martin, Clerk

3. APPROVAL OF AGENDA

MOTION: Councilor Garcia moved, seconded by Councilor Garcia, to approve the as presented.

VOTE: The motion was on the following Roll Call vote:

For: Councilor Chavez, Councilor Garcia, Councilor Cassutt, Councilor Villarreal

Against: None

Abstain: None



MINUTES

REGULAR MEETING OF
THE QUALITY OF LIFE
COMMITTEE
SEPTEMBER 21, 2022
5:00 PM
VIRTUAL MEETING

4. APPROVAL OF CONSENT AGENDA

MOTION: Councilor Chavez moved, seconded by Councilor Garcia, to approve the as presented.

VOTE: The motion was on the following Roll Call vote:

For: Councilor Chavez, Councilor Garcia, Councilor Cassutt, Councilor Villarreal

Against: None

Abstain: None

5. PRESENTATION

- a. Updates from the Santa Fe Food Policy Council Advocacy: How Individuals, Groups and Local Government Influence Change. (David Sundberg, Chair, Santa Fe Food Policy Council: davidsundbergnm@gmail.com; Pam Roy, Council Member, : pam@farmtotablenm.org; Maria Sanchez-Tucker, Community Services Director, metucker@santafenm.gov, 505-955-6638)
- b. New Mexico Food, Farm and Hunger Initiative Advocacy. Overview of the Statewide Hunger Initiative, Legislative Session 2022. (David Sundberg, Chair, Santa Fe Food Policy Council: davidsundbergnm@gmail.com; Kendal Chavez, Food and Hunger Coordinator with the Office of the Governor, kendal.chavez2@state.nm.us; Maria Sanchez-Tucker, Community Services Director, metucker@santafenm.gov, 505-955-6638)

6. ACTION ITEMS: CONSENT

- a. Approval of Minutes for the September 7, 2022 Quality of Life Committee Meeting



MINUTES

REGULAR MEETING OF
THE QUALITY OF LIFE
COMMITTEE
SEPTEMBER 21, 2022
5:00 PM
VIRTUAL MEETING

Committee Review:

Quality of Life Committee 9/21/2021

MOTION: Councilor Chavez moved, seconded by Councilor Garcia, to approve the minutes as presented.

VOTE: The motion was on the following Roll Call vote:

For: Councilor Chavez, Councilor Garcia, Councilor Cassutt, Councilor Villarreal

Against: None

Abstain: None

Approved on consent.

- b. Request for Approval of Amendment No. 3 to Children, Youth and Families Department (CYFD) Contract Agreement #21-690-3200-20846-3 to Amend ARTICLE III Limitation of Cost to Reflect an Update in Language and a FY23 and FY24 Decrease of Program Growth by \$13,361 for FY23 and FY24 for a Total of \$94,553, for a New Contract Total of \$383,351; Amend to Add Item Y - Trauma Response and Services Training Mandated by KEVIN S., et al. v. BLALOCK, et al., No. 1:18-cv-00896 Settlement Agreement; and Amend Budget Consistent with Amendments to the Cost. (CYFD Alternatives to Detention Grant) (Julie Sanchez, Youth and Family Services Division Director: jjsanchez@santafenm.gov, 505-955-6678).

Committee Review:

Finance Committee: 09/19/2022

Quality of Life Committee: 09/21/2022

Governing Body: 09/28/2022

MOTION: Councilor Chavez moved, seconded by Councilor Garcia, to approve the contract amendment as presented.

VOTE: The motion was on the following Roll Call vote:

For: Councilor Chavez, Councilor Garcia, Councilor Cassutt,



MINUTES

REGULAR MEETING OF
THE QUALITY OF LIFE
COMMITTEE
SEPTEMBER 21, 2022
5:00 PM
VIRTUAL MEETING

Councilor Villarreal

Against: None

Abstain: None

Approved on Consent.

- c. Request for Approval of American Rescue Plan Act (ARPA) Recovery Funds Subrecipient Contract in the Total Amount of \$900,000 for Early Childcare Job Development Services with the Santa Fe Community College Early Childhood Education Center of Excellence (SFCC-ECCOE) Under the First Statutory Category; to Respond to the COVID-19 Public Health Emergency or its Negative Economic Impacts. (Julie Sanchez, Youth and Family Services Division Director: jjsanchez@santafenm.gov; 505-955-6678)

Committee Review:

Finance Committee: 09/19/2022

Quality of Life Committee: 09/19/2022

Governing Body: 09/28/2022

MOTION: Councilor Chavez moved, seconded by Councilor Garcia, to approve the contract as presented.

VOTE: The motion was on the following Roll Call vote:

For: Councilor Chavez, Councilor Garcia, Councilor Cassutt, Councilor Villarreal

Against: None

Abstain: None

Approved on Consent.

- d. Request for Approval of General Services Contract with Travers Mechanical Using ITB # 22/43/B for Refrigeration and Mechanical Services for the Ice Arena at GCCC in the Amount of \$245,000 (Expiring



MINUTES

REGULAR MEETING OF
THE QUALITY OF LIFE
COMMITTEE
SEPTEMBER 21, 2022
5:00 PM
VIRTUAL MEETING

on June 30, 2026). (Tom Miller, Ice Arena Manager: temiller@santafenm.gov, (505-955-4031)

Committee Review:

Quality of Life: 09/21/22

Finance Committee: 10/03/2022

Governing Body: 10/12/2022

MOTION: Councilor Chavez moved, seconded by Councilor Garcia, to approve the contract as presented.

VOTE: The motion was on the following Roll Call vote:

For: Councilor Chavez, Councilor Garcia, Councilor Cassutt, Councilor Villarreal

Against: None

Abstain: None

Approved on consent.

- e. Request for Approval of Amendment No. 2 to Item #20-0306 between the City and Immix/UKG Contract for Support Upgrading Current Kronos Environment to Workforce Dimensions Environment. (Manuel Gonzales, ITT Director: mmgonzales@santafenm.gov 505-231-1749; Jaclyn Henley, ITT Project Manager: jlhenley@santafenm.gov 505- 629-5914)

Committee Review:

Finance Committee: 09/19/2022

Quality of Life Committee: 09/21/2022

Governing Body: 09/28/2022

MOTION: Councilor Chavez moved, seconded by Councilor Garcia, to approve the contract amendment as presented.

VOTE: The motion was on the following Roll Call vote:



MINUTES

REGULAR MEETING OF
THE QUALITY OF LIFE
COMMITTEE
SEPTEMBER 21, 2022
5:00 PM
VIRTUAL MEETING

For: Councilor Chavez, Councilor Garcia, Councilor Cassutt,
Councilor Villarreal

Against: None

Abstain: None

Approved on Consent.

- f. Request for the Approval of North Central New Mexico Economic Development District, Non-Metro Area Agency on Aging (AAA) State Funding in the Total Amount of \$109,484 for the Nutrition Services Incentive Program (NSIP), Term Ending June 30, 2023; North Central New Mexico Economic Development District, Non-Metro Area Agency on Aging (AAA); (Gino Rinaldi, Senior Services Division Director: earinaldi@santafenm.gov, 505-955-4710).

Committee Review:

Finance Committee: 09/19/2022

Quality of Life Committee: 09/21/2022

Governing Body: 09/28/2022

MOTION: Councilor Chavez moved, seconded by Councilor Garcia, to approve the contract as presented.

VOTE: The motion was on the following Roll Call vote:

For: Councilor Chavez, Councilor Garcia, Councilor Cassutt,
Councilor Villarreal

Against: None

Abstain: None

Approved on Consent.

7. MATTERS FROM STAFF



MINUTES

REGULAR MEETING OF
THE QUALITY OF LIFE
COMMITTEE
SEPTEMBER 21, 2022
5:00 PM
VIRTUAL MEETING

8. **MATTERS FROM THE COMMITTEE**
9. **MATTERS FROM THE CHAIR**
10. **NEXT MEETING: October 05 2022**
11. **ADJOURN**

There being no further business before the Committee, the meeting adjourned at 6:22 pm.

Liaison

Chair

VOTE SUMMARY



Meeting Name - Finance Committee

Meeting Start Date - 10/03/2022

Meeting Committee - Finance Committee

Item Title -

Request for Approval of Lease Agreement Between the City of Santa Fe and Presbyterian Medical Services, Inc. for 1121 Alto Street, Santa Fe, NM, Located on the City's Bicentennial Alto Park Property. (Terry J. Lease, Asset Development Manager, tjlease@santafenm.gov, 505-629-2206)

Committee Review:

Finance Committee: 10/03/22

Quality Life Committee: 10/05/22

Public Works and Utilities Committee: 10/11/22

Economic Development Advisory Committee: 10/12/22

Governing Body: 10/26/22

Item Type - lease

Item Owner - Terry Lease

Item Sponsor -

Item Tracking Number - 22-15912

Motion Type - Approve

Motion Mover - Renee Villarreal

Motion Seconder - Jamie Cassutt

Motion Status - approved

Vote For Count - 5

Vote Against Count - 0

Vote Abstain Count - 0

Vote Absent Count - 0

VOTE SUMMARY



City of Santa Fe

Vote For Names - Renee Villarreal, Carol Romero-Wirth, Signe Lindell, Jamie Cassutt, Chris Rivera

Vote Against Names -

Vote Abstain Names -

Vote Absent Names -

User Name -Carolynn Roibal

User Email - croibal@santafenm.gov



City of Santa Fe, New Mexico

Memorandum



DATE: August 16, 2022

TO: Economic Development Advisory Committee
Finance Committee
Quality of Life
Governing Body

FROM: *Terry Lease*

Terry Lease, Asset Development Manager, Office of Economic Development

CC: *Richard Brown*

Rich Brown, Director
Community & Economic Development Department

Re: Lease Agreement Between the City of Santa Fe and Presbyterian Medical Services, Inc.

EXECUTIVE SUMMARY:

Request for approval of Lease Agreement between the City of Santa Fe and Presbyterian Medical Services, Inc. ("Lessee" or "PMS") for 1121 Alto Street, Santa Fe, NM, located on the City's Bicentennial Alto Park property. The Lease Agreement, if approved, will allow Lessee to continue to operate PMS's Head Start Program and expand services by offering the Early Head Start Program.

BACKGROUND:

The City of Santa Fe owns a 10,983 square foot building located at the west end of the City's Bicentennial Alto Park. Lessee has leased a portion of the building for Lessee's Head Start Program under two lease agreements; the first is dated May 9, 2007, and the second is dated March 2, 2017 (Item #17-0180). The March 2, 2017 Lease Agreement terminated on February 28, 2022 and Lessee has continued to occupy the building under a month-to-month tenancy. Lessee provides much needed early childhood services and desires to expand their services at their current location to add Lessee's Early Head Start Program. The portion of the building that is not occupied by Lessee has been vacant for several years and is in need of renovation and repairs. Lessee has funding to make improvements to the vacant portion of the building that will accommodate the expansion of Lessee's early childhood services, and the City desires to lease the entire building for the purpose of operating Lessee's early childhood services.

The City owns numerous buildings that it leases and in order to avoid violating the "Anti-Donation Clause" of the New Mexico Constitution, the City generally charges a "fair market value rent" as "just compensation." Exempt from the Anti-Donation Clause are donations or aid for the care and maintenance of sick and indigent persons, as well as projects falling under specific statutory allowances for affordable housing and local economic development (LEDA) projects. Given the City's interest in facilitating access to care by sick and indigent persons living in Santa Fe, the City may decrease rent below the amount considered "just compensation" for entities providing medical services, childcare, housing, shelter, mental health, addiction assistance, or food to indigent persons, and the amount of the decrease in rent may be up to 90% of market value, and no more than the value of the uncompensated services to indigent persons.

ACTION REQUESTED:

The Office of Economic Development respectfully requests your approval of the Lease Agreement.

ATTACHMENTS:

- Lease Agreement
- Certificate of Insurance.
- Fiscal Impact Report
- Summary of Contracts

**LEASE AGREEMENT BETWEEN
THE CITY OF SANTA FE AND PRESBYTERIAN MEDICAL SERVICES, INC.**

This LEASE AGREEMENT (“Lease Agreement”) is made and entered into as of the date of the last signature (“Effective Date”), by and between the CITY OF SANTA FE, a municipal corporation (“City” or “Lessor”) and PRESBYTERIAN MEDICAL SERVICES, INC., a New Mexico non-profit corporation (“Lessee”), collectively the “Parties.”

WHEREAS, the City owns numerous buildings that it leases and in order to avoid violating the “Anti-Donation Clause” of the New Mexico Constitution, the City generally charges a “fair market value rent” as “just compensation;” and

WHEREAS, exempt from the Anti-Donation Clause are donations or aid for the care and maintenance of sick and indigent persons, as well as projects falling under specific statutory allowances for affordable housing and local economic development (LEDA) projects; and

WHEREAS, given the City’s interest in facilitating access to care by sick and indigent persons living in Santa Fe, the City may decrease rent below the amount considered “just compensation” for entities providing medical services, childcare, housing, shelter, mental health, addiction assistance, or food to indigent persons; and

WHEREAS, the amount of the decrease in rent may be up to 90% of market value, and no more than the value of the uncompensated services to indigent persons. The fair market rent is \$208,677 per year (\$19/sf/year); and

WHEREAS, the City owns a 10,983 square foot building located at the west end of the City’s Bicentennial Alto Park; and

WHEREAS, Lessee has leased a portion of the building for Lessee’s Head Start Program under two lease agreements; the first is dated May 9, 2007 and the second is dated March 2, 2017 (Item #17-0180); and

WHEREAS, the March 2, 2017 Lease Agreement terminated on February 28, 2022 and Lessee has continued to occupy the building under a month-to-month tenancy; and

WHEREAS, the portion of the building that is not occupied by Lessee has been vacant for a number of years and is in need of renovation and repairs; and

WHEREAS, Lessee provides much needed early childhood services and desires to expand their services at their current location to add Lessee’s Early Head Start Program; and

WHEREAS, Lessee has funding to make improvements to the vacant portion of the building that will accommodate the expansion of Lessee's early childhood services; and

WHEREAS, the City desires to lease the entire building for the purpose of operating Lessee's early childhood services.

WITNESSETH:

In consideration of the Lessee's promises herein, Lessor hereby gives Lessee a Lease Agreement, revocable and terminable as hereinafter provided, to enter on, make use of, (and develop) the real property of Lessor as follows:

1. PREMISES

Lessor allows Lessee to use, occupy, and improve, subject to the terms and conditions of this Lease Agreement, a 10,983 square foot building, a 12,893 square feet "rear yard" area and a 60'x65' parking area adjoining the building to the north, all on a parcel of land known as a portion of Tract 2 of the Hansen Subdivision, Unit 2, Section 22 of Township 17 North, Range 09 East, of the New Mexico Principle Meridian, situated at 1121 Alto Street, Santa Fe, New Mexico (the "Premises"), as shown on **Exhibit A** of this Lease Agreement.

Lessee accepts the Premises in its present state and agrees that Lessee's currently occupied space is in good condition and the currently unoccupied space is in fair condition, without any representation or warranty by the City as to the condition of the Premises. The City hereby grants Lessee a Renovation Period to make the necessary renovations and repairs to the entire Premises. Said renovations and repairs are to be made at Lessee's sole cost and expense and to the satisfaction of the City. The Renovation Period shall commence on the Execution Date and terminate 90-days thereafter.

2. LEASE TERM

- a. Initial Term. The initial term of this Lease Agreement shall commence at 12:00 a.m. on the Effective Date. The term of this Lease Agreement shall consist of an "Initial Term" of five (5) years with two (2) "Option Terms" of five (5) years each.
- b. Option Term. Lessee's exercise of any Option Term is contingent upon compliance with this Lease Agreement and with proper written notice by Lessee to Lessor at least ninety (90) days prior to the expiration of the Initial Term and shall be at Lessor's sole discretion. All terms, covenants and conditions of this Lease Agreement, excepting the amount of rent to be paid, shall remain in full force and effect during any extension of the term.
- c. Hold Over. In the event Lessee remains in possession of the Premises after the expiration of the Term of this Lease Agreement, such possession may, at the sole option of Lessor, be continued as a month-to-month tenancy. During any such month-to-month tenancy, the Rent due shall be prorated and payable on a monthly basis, and the terms and conditions of the Lease Agreement shall be otherwise applicable.

3. RENT

- a. Base Rent. The fair market rent is \$208,677 per year and the total discounted first year Rent is \$20,867.70, which is 90% of the fair market rent. **Monthly rent** of \$1,738.98 is due on the

Rent Commencement Date and Rent is thereafter due in full on the first day of each month during the Term without notice or demand and without deduction or offset for any cause whatsoever. Lessee shall make payments to; City of Santa Fe, Treasury Division, 200 Lincoln Ave., Room 114, Santa Fe, NM, 87504.

- b. Rent Commencement Date. The Rent Commencement Date shall be November 1, 2022 in order to allow for required tenant improvements made at the sole cost of Lessee.
- c. Optional Terms Rent. The amount of rent to be paid during each exercised Option Term shall be the then-prevailing fair market rental value of the Premises (less the value of Lessee’s improvements and inventory on the Premises), as determined by Lessor, and in no event shall the amount of annual rent be less than the amount of annual rent paid during the previous year.
- d. Penalty for Late Rent Payment. If money payable to Lessor as a condition of this Lease Agreement is not paid in full when due, a penalty of 10% of the amount due and unpaid shall be added to the amount due, and the total sum of the then-due rental payment plus penalty shall become immediately due and payable to Lessor. A further penalty of 10% of the amount due and unpaid, including previously assessed penalties, shall be added for each additional month that said amount remains unpaid. The assessment and collection of the 10% penalty is in addition to any other rights of Lessor, if Lessee does not faithfully perform the terms, covenants and conditions of this Lease Agreement.
- e. Lessee shall provide to the City annually, and upon request, a report containing the value of Lessee’s programs served at the Premises, including the number of indigent children and families served at no cost. Lessee shall also provide additional reports containing the value of the services at any given point of the program year as requested by the City during the term of this Lease Agreement. Lessee shall provide the report substantially in the following format as shown on **Exhibit B** of this Lease Agreement, which may be changed from time-to-time with the approval of the City.
- f. Increase in Rent. Rent shall be increased annually by the City, effective on the first anniversary of the Rent Commencement Date and annually thereafter. Annual increases in Rent of 1.89% are based on the 10-year average of the Consumer Price Index, All Urban Consumers, All Items in U.S. City Average, years 2012-2021.
- g. Rent Schedule. In consideration of this Lease Agreement, City and Lessee agree to the following Rent Schedule:

Option Years	Year	Term Dates		Leasable Square Feet	Total Annual Rent	Escalation	Monthly Rent	Annual Cost per LSF
	1	11/1/2022	10/31/2023	10,983.00	\$20,867.70		\$1,738.98	\$1.90
	2	11/1/2023	10/31/2024	10,983.00	\$21,262.10	1.89%	\$1,771.84	\$1.94
	3	11/1/2024	10/31/2025	10,983.00	\$21,663.95	1.89%	\$1,805.33	\$1.97
	4	11/1/2025	10/31/2026	10,983.00	\$22,073.40	1.89%	\$1,839.45	\$2.01
	5	11/1/2026	10/31/2027	10,983.00	\$22,490.59	1.89%	\$1,874.22	\$2.05
*	6	11/1/2027	10/31/2028	10,983.00	\$22,915.66	1.89%	\$1,909.64	\$2.09
*	7	11/1/2028	10/31/2029	10,983.00	\$23,348.77	1.89%	\$1,945.73	\$2.13
*	8	11/1/2029	10/31/2030	10,983.00	\$23,790.06	1.89%	\$1,982.50	\$2.17

*	9	11/1/2030	10/31/2031	10,983.00	\$24,239.69	1.89%	\$2,019.97	\$2.21
*	10	11/1/2031	10/31/2032	10,983.00	\$24,697.82	1.89%	\$2,058.15	\$2.25
*	11	11/1/2032	10/31/2033	10,983.00	\$25,164.61	1.89%	\$2,097.05	\$2.29
*	12	11/1/2033	10/31/2034	10,983.00	\$25,640.22	1.89%	\$2,136.69	\$2.33
*	13	11/1/2034	10/31/2035	10,983.00	\$26,124.82	1.89%	\$2,177.07	\$2.38
*	14	11/1/2035	10/31/2036	10,983.00	\$26,618.58	1.89%	\$2,218.22	\$2.42
*	15	11/1/2036	10/31/2037	10,983.00	\$27,121.67	1.89%	\$2,260.14	\$2.47

4. USE OF PREMISES

- a. Conditions of Use. Lessee shall use the Premises solely for the specific purpose of operating the early childhood services for the sick and indigent persons living in Santa Fe.
- b. Improvement of the Premises. Lessee may, with the prior written consent of Lessor and at no cost to Lessor, make improvements to the Premises which are required to comply with the City of Santa Fe Land Use Code, which includes the Historic District Development Rules, and other applicable local, state and federal regulations. Lessee shall upon Lessor's request, remove all such improvements made to the Premises at the termination of this Lease Agreement.
- c. Trade Fixtures. All trade fixtures installed by Lessee after the Effective Date of this Lease Agreement shall remain the property of Lessee, who may remove the same upon termination of this Lease Agreement, provided that removal shall be done in such a manner as not to injure or damage the Premises. In the event that Lessee fails to remove said trade fixtures after receipt of notice from Lessor to do so, Lessor may remove and dispose of the same as it sees fit and Lessee agrees to sell, assign, transfer and set over to Lessor all of Lessee's right, title and interest in and to said trade fixtures and any personal property not removed by Lessee. Lessee further agrees that should Lessor remove said trade fixtures pursuant to this paragraph, that Lessee shall pay Lessor upon demand the cost of such removal, plus the cost of transportation and disposal thereof.
- d. Compliance with Laws. Lessee's use of the Premises shall at all times be in compliance with the City of Santa Fe Municipal Code and other applicable local, state and federal regulations including but not limited to compliance with the City of Santa Fe Integrated Pest Management Policy (§ 10-7 SFCC 1987) (the Pest Management Policy).

5. REPAIRS & MAINTENANCE

- a. During the term of this Lease and any extension or renewal thereof, Lessee shall not cause or permit any waste, damage or injury to the Premises or to any improvements made to the Premises.
- b. During the term of this Lease and any extension or renewal thereof, Lessee shall, at its sole expense, keep and maintain the Premises in good and clean condition at all times. During the Term of this Lease, Lessee shall be responsible for the costs of any and all repairs and replacements necessitated by the actions or omissions of Lessee's staff, guests, students, agents and invitees. Subject to the foregoing, Lessor shall remain responsible for the costs of repair or replacement of all structural components of the Premises and major systems therein (e.g.,

roof, flooring, walls, HVAC, plumbing and electrical); provided, however, that PMS agrees to contribute a maximum of \$20,000.00 per year during the term hereof toward the City's actual costs incurred in repairing or replacing said structural components and major systems.

- c. Repairs and replacements required to be made by the Lessee shall be made promptly as and when necessary and shall be at least equal in quality of materials and workmanship to that originally existing in the Premises.
- d. During the term of this Lease and any extension or renewal thereof, Lessee shall maintain the landscaping and plants between the building and the sidewalk along the entire perimeter of the building.
- e. Lessee shall at all times During the term of this Lease and any extension or renewal thereof, and in a timely manner, provide a safe Premises by eliminating conditions caused by, including and not limited to, snow, ice, debris, mold and standing water.
- f. Lessor reserves the right to inspect the Premises at any time during the Term of this Lease Agreement to verify Lessee's compliance with this Section 5. In the event Lessee fails to maintain the Premises at a standard acceptable to the Lessor, as determined in Lessor's sole discretion, Lessor may terminate this Lease Agreement in accordance with Section 13 herein.
- g. Repair and maintenance shall be to the sole satisfaction of Lessor, and if Lessee fails to fulfill any duty imposed under this Section 5 within a reasonable period, City may, and is not required to, perform those duties at Lessee's sole cost. Lessee shall promptly cooperate with Lessor if Lessor undertakes to perform such duties. No action by Lessor taken pursuant to this Section 5 shall constitute a waiver of Lessee's obligations. Lessee's obligations under this Section 5 shall survive the expiration or termination of this Lease Agreement.

6. UTILITIES & SERVICES

Lessee, at Lessee's sole cost and expense, agrees to provide the following:

- a. All gas, electricity, water, sanitary sewer service and refuse disposal services; and
- b. Janitorial supplies and services; and
- c. Pest control services; and
- d. Snow removal services.

7. TAXES

Lessee shall pay all taxes levied and assessed, if any, upon any personal property, fixtures and improvements belonging to Lessee and located upon the demised Premises, and all leasehold and possessory interest taxes levied or assessed by any proper taxing authority.

8. SUBLEASE, ASSIGNMENT OR TRANSFER

Lessee shall not sublet, assign or otherwise transfer this Lease Agreement, without the prior written consent of Lessor, which Lessor may withhold for any or no reason. Any such actions taken by Lessee without Lessor's consent shall result in the immediate termination of this Lease Agreement.

9. INSURANCE

Lessee shall at all times maintain and provide adequate insurance coverage which includes, without limitation, each of the following:

- a. Property Insurance. Lessee shall carry and maintain in full force and effect during the term of this Lease Agreement casualty insurance ("extended coverage" and "additional extended coverage") as may be available for all improvements to the Premises in an amount sufficient to restore and replace existing structures and improvements if lost or damaged by any form of casualty. Lessee shall cause the City of Santa Fe to be named as an additional insured on such policy of insurance.

Commercial General Liability Insurance which shall be written on an occurrence basis and be at least as broad as the latest version of ISO form CG 00 01 with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Such policy shall include Broad Form Contractual Liability coverage and shall be endorsed to include the City, its directors, officials, officers, employees, agents, and volunteers as additional insureds on all primary and excess policies for ongoing and completed operations performed by, or behalf of Contractor. Such additional insured coverage shall be as broad as that provided by ISO form CG 2010 (ongoing operations) and CG 20 37 (completed operations).

Workers' Compensation Insurance with statutory limits, and **Employer's Liability insurance** with limits of not less than \$1,000,000 per accident or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City, its directors, officials, officers, employees, agents, and volunteers.

- b. Certificates of Insurance. Prior to the Effective Date of this Lease Agreement, and thereafter at any time during the Term of this Lease Agreement that Lessor requests, Lessee shall provide Lessor with certificates of insurance for each policy evidencing that the coverage required hereunder is current. Such policy shall provide that the coverage evidenced thereby shall not be terminated or modified for any reason without thirty (30) days prior written notice to the Lessor. A certificate or policy which states that failure to give such notice imposes no obligation on the part of the insurer shall be unacceptable to Lessor, and Lessee shall be responsible for removing such language from such certificate or policy.

10. INDEMNIFICATION

Lessee shall indemnify, hold harmless and defend Lessor from all losses, damages, claims or judgments, including payment of all attorney's fees and costs, on account of any suit, judgment, execution, claim, action or demand whatsoever arising from damages occurring on the Premises and Lessee's use of the Premises hereunder, including use of the Premises by Lessee's employees, agents, representatives, contractors, agents, guests, invitees or permitted assigns.

Lessee shall cause any and all agreements that Lessee enters into with any of the above parties to contain language indemnifying Lessor as provided in this Section.

11. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by Lessor in connection with the Lease Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et seq. NMSA 1978, as amended. The City and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability

pursuant to law. No provision of this License modifies or waives any provision of the New Mexico Tort Claims Act.

12. EASEMENTS

Lessor reserves the exclusive right to grant access, utility or other easements on or through the Premises. Lessor shall notify Lessee in writing prior to Lessor's grant of any easement through the Premises.

13. TERMINATION

- a. Lessor may terminate this Lease Agreement upon Lessee's failure to comply with any provisions contained herein. Prior to termination, Lessor shall hand deliver or mail notice to Lessee via certified or registered mail specifying:
 - i. the breach;
 - ii. the action required to cure the breach;
 - iii. a date, not less than fifteen (15) days from the date the notice is hand delivered or mailed to Lessee, by which such breach must be cured; and
 - iv. that failure to cure such breach on or before the date specified in the notice will result in termination of the Lease Agreement.
- b. Lessee may terminate this Lease Agreement with written notice to Lessor at least thirty (30) days prior to the termination date.
- c. At the termination of this Lease Agreement Lessee shall surrender the Premises in the condition in which they were at the inception of this Lease Agreement, excepting:
 - i. Deterioration caused through reasonable use and ordinary wear and tear;
 - ii. Alterations, improvements or conditions made with Lessor's written approval.

14. NOTICE

Any required notice will be deemed delivered, given and received (i) when personally hand delivered, or (ii) five days after the same are deposited in the United States mail, postage prepaid, registered, addressed to the applicable party at the address indicated below for such party, or at such other address as may be designated by either party in a written notice to the other party:

To Lessor:	City of Santa Fe Attn. City Manager P.O. Box 909 Santa Fe, NM 87504	To Lessee:	Presbyterian Medical Services Attn. Larry Martinez 1409 Second Street Santa Fe, NM 87505
------------	--	------------	---

With a copy to: City of Santa Fe
Attn. Asset Development Manager
P.O. Box 909
Santa Fe, New Mexico 87504

15. NO WAIVER

No waiver of a breach of any of the provisions contained in this Lease Agreement shall be construed to be a waiver of any succeeding breach of the same or any other provisions.

16. SEVERABILITY

In the event that one or more of the provisions contained in this Lease Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

17. ENTIRE AGREEMENT

The foregoing constitutes the entire Lease Agreement between the Parties, represents their entire understanding, and defines all of their respective rights, title, and interests as well as all of their duties, responsibilities and obligations. Any and all prior lease agreements and understandings between the Parties related to the Premises, if any, are merged herein. This Lease Agreement shall not be modified or amended except by a written document signed by the Parties.

18. BINDING EFFECT

This Lease Agreement shall be binding upon and insure to the benefit of the Parties hereto and their respective successors and permitted assigns.

19. LITIGATION EXPENSE

In the event of litigation between the Parties, Lessee shall pay any necessary costs, including reasonable attorney's fees, expenses and other costs of collection or otherwise, which Lessor shall incur in enforcing this Lease Agreement or in recovering any and all damages caused to the Premises by Lessee, or Lessee's contractors, agents, employees or permitted assigns.

20. HEADINGS

The section headings contained in this Lease Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Lease Agreement.

21. APPLICABLE LAW; VENUE

In any action, suit or legal dispute arising from this Lease Agreement, Lessee agrees that the laws of the State of New Mexico shall govern. The Parties agree that any action or suit arising from this Lease Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

22. AMENDMENT

This Lease Agreement shall not be altered, changed or modified except by an amendment in writing executed by the Parties hereto.

23. CONSTRUCTION OF IMPROVEMENTS

- a. Construction Assurance. Prior to the commencement of any construction or work of improvement on the Premises (“Improvements”), Lessee shall furnish to Lessor evidence that sufficient monies will be available to complete the Improvements. Such evidence shall represent at least the total estimated cost of construction and such evidence may take on of the following forms:
 - i. Performance Bond - To be supplied by Lessee’s contractor(s) and issued jointly to Lessee and Lessor as Obligee; or
 - ii. Irrevocable Letter of Credit – or other form of banker’s assurance issued to Lessor from a financial institution licensed to do business in the State of New Mexico and covered by Federal Depository Insurance which shall remain in effect until Lessor acknowledges satisfactory completion of construction of Improvements.
- b. Turnover or Removal of Improvements.
 - i. Turnover of Improvements – If Lessor directs that the Improvements be turned over to Lessor at the expiration of this Lease Agreement, they shall be turned over in a state of good condition and repair.
 - ii. Removal of Improvements – If Lessor directs that the Improvements be removed, all or in part, prior to the expiration or termination of this Lease Agreement, Lessee shall remove all Improvements from the Premises, at Lessee’s sole cost. Lessee shall restore the portions of the Premises from which it removes any Improvements, as nearly as reasonably possible, to a level graded condition at Lessee’s sole cost. If Lessee has not removed the Improvements in a reasonable amount of time after the expiration or termination of this Lease Agreement, then Lessor may, at its option, declare the Improvements to be Lessor-owned real property, use or dispose of the remaining personal property pursuant to applicable law, and otherwise restore the Premises at Lessee’s sole cost.
 - iii. Removal of Hazardous Materials – All hazardous on the Premises used or stored by Lessee must be removed prior to the expiration or termination of this Lease Agreement, whether or not the Improvements remain on the Premises.

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Lease Agreement as of this _____
day of _____, 20____.

LESSOR:
CITY OF SANTA FE

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE BUSTOS MIHELIC, CITY CLERK

APPROVED AS TO FORM FOR LEGAL SUFFICIENCY:

Andrea Salazar

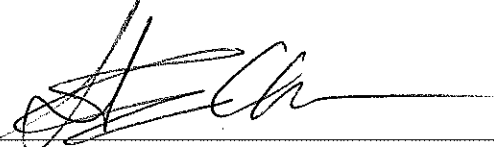
ERIN K. MCSHERRY, CITY ATTORNEY

APPROVED AT TO FINANCE:

ALEXIS LOTERO, INTERIM FINANCE DIRECTOR
Object Org. Code 2122800-460350 *AH*
AH

[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

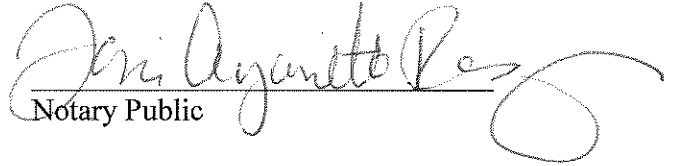
LESSEE: PRESBYTERIAN MEDICAL SERVICES, INC.



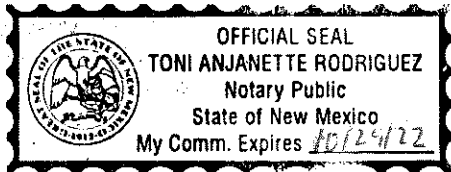
STEVE HANSEN, PRESIDENT & CEO

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 26th day of July 2022, by Steve Hansen.

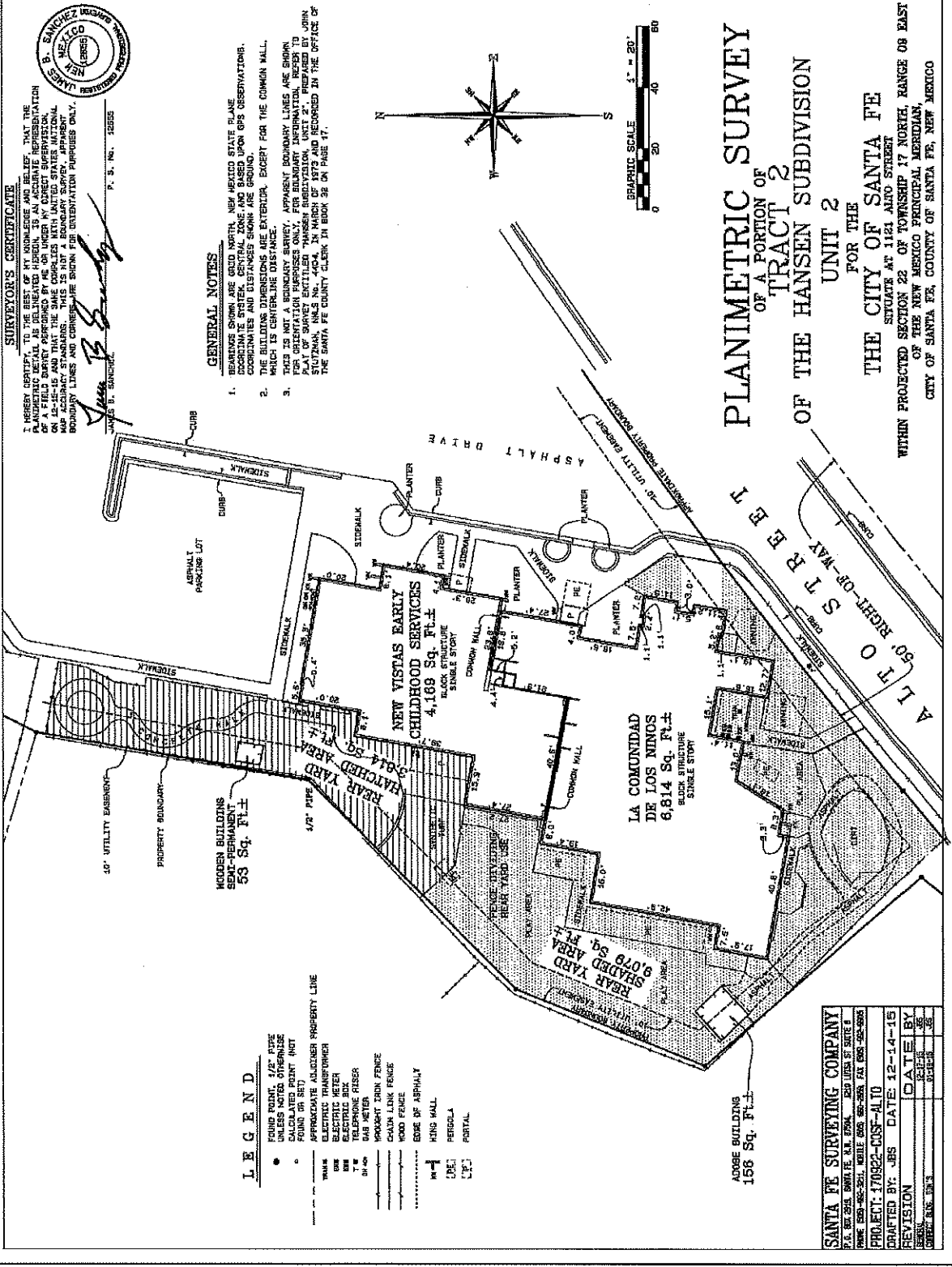

Notary Public

My commission expires:



[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

EXHIBIT A



SURVEYOR'S CERTIFICATE
 I, HEREBY CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT THE PLANIMETRIC SURVEY AS DELINEATED HEREON, IS AN ACCURATE REPRESENTATION OF A FIELD SURVEY CONDUCTED BY ME OR UNDER MY DIRECT SUPERVISION, AND THAT THE SAME IS IN ACCORDANCE WITH THE STANDARD PRACTICES AND MAP ACCURACY STANDARDS OF A BOUNDARY SURVEY, APPROPRIATE TO THE NATURE OF THE SURVEY. THIS IS NOT A BOUNDARY SURVEY, APPARENT BOUNDARY LINES AND CORNERS ARE SHOWN FOR ORIENTATION PURPOSES ONLY.
 JAMES B. SANCHEZ
 P. S. No. 12255

GENERAL NOTES

1. BEARINGS SHOWN ARE GRID NORTH, NEW MEXICO STATE PLANE COORDINATE SYSTEM, CENTRAL ZONE AND BASED UPON GPS OBSERVATIONS. CORNERS AND DISTANCES SHOWN ARE GROUND.
2. DISTANCES ARE SHOWN IN FEET AND DECIMALS THEREOF, EXCEPT FOR THE COMMON WALL, WHICH IS CENTERLINE DISTANCE.
3. THIS IS NOT A BOUNDARY SURVEY, APPARENT BOUNDARY LINES ARE SHOWN FOR ORIENTATION PURPOSES ONLY. FOR BOUNDARY INFORMATION, REFER TO PLAT OF SURVEY ENTITLED "HANSEN SUBDIVISION, UNIT 2", PREPARED BY JOHN B. SANCHEZ, REGISTERED PROFESSIONAL SURVEYOR, AND RECORDED IN THE OFFICE OF THE SANTA FE COUNTY CLERK, IN BOOK 22 ON PAGE 17.

SANTA FE SURVEYING COMPANY	
P.O. BOX 2584 SANTA FE, N.M. 87504 2520 JESSIE ST SUITE B	
PHONE 505-832-2571, MOBILE 505-980-2584 FAX 505-832-5858	
PROJECT: 170522-COST-ALTO	DRAFTED BY: JBS DATE: 12-14-15
REVISION	DATE BY
CORRECT LINE: JBS	DATE BY

EXHIBIT B

Presbyterian Medical Services

Santa Fe Children's Services

**La Comunidad de los Ninos - Early Head Start Budget -
FY2022**

Category	Expenditures
Personnel	
Benefits	
Educational Supplies	
Operating Costs	
Food Expenses	
Parent Services	
Total Families Served	
Total	



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # _____

Contractor: Presbyterian Medical Services, Inc. ("PMS")

Description: **Lease Agreement for a 10,983 square foot City owned building located at 1121 Alto Street.**

Contract Agreement Lease / Rent Amendment

Term Start Date: Date of last signature Term End Date: 5-years thereafter

Approved by Council Date: _____

Contract / Lease: Lease Agreement

Amendment # N/A to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ N/A

Extend Termination Date to: N/A

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)
Private lease of real property in excess of \$25,000 per NMSA Section 3-54-1.
Original Lease (17-0180) for a portion of the building is dated 03/2, 2017, between the City of Santa Fe and PMS. No entering into a new lease with an increase to the premises to add additional Early Childhood services.

3. **Procurement History:** _____

JoAnn Lovato
JoAnn Lovato (Aug 17, 2022 14:37 MDT)

Purchasing Officer Review: _____

Aug 17, 2022
Date: _____

Comment & Exceptions: **No Procurement required** Lease only

4. **Funding Source:** _____ **Org / Object:** 2122800-460350

Andy Hopkins
Andy Hopkins (Sep 15, 2022 16:59 MDT)

Budget Officer Approval: _____

Sep 15, 2022
Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Terry Lease, Asset Dev. Mgr. Phone # 505-629-2206

Email: tjlease@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____

FISCAL IMPACT REPORT

General Information:

(Check) Bill: _____ Resolution: _____

Short Title(s): Lease Agreement between the City of Santa Fe and Presbyterian Medical Services, Inc. for lease of 1121 Alto Street, Santa Fe, NM

Sponsor(s): _____

Reviewing Department(s): Public Works, Finance

Staff Completing FIR: Terry Lease, Asset Development Manager Date: 8/1/2022 Phone: 505-629-2206

Reviewed by City Attorney: Andrea Salazar Date: 7/26/2022

Reviewed by Finance Director: _____ Date: _____

Summary:

Private lease of real property in excess of \$25,000 per NMSA Section 3-54-1. Original Lease (17-0180) for a portion of the building is dated 03/2, 2017, between the City of Santa Fe and PMS. No entering into a new lease with an increase to the premises to add additional Early Childhood services.

Departments Affected:

Economic Development Enterprise Fund (Business Unit: 2122800/460350) will receive annual rent.

Consequences of Not Enacting Legislation:

PMS will not be able to provide Childhood and Early Childhood services to Santa Fe families.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:

None noted.

Performance and Administrative Implications:

None noted.

Fiscal Implications:

None noted.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE __	FYE __	FYE __	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
Personnel and Benefits*	\$ _____	\$ _____	\$ _____	_____	_____	_____	
Capital Outlay	\$ _____	\$ _____	\$ _____	_____	_____	_____	
Contractual/	\$ _____	\$ _____	\$ _____		_____	_____	
Professional Services							
Operating	\$ _____	\$ _____	\$ _____		_____	_____	\$ _____
Total:	\$ _____	\$ _____	\$ _____				\$ _____

* This includes all staff time associated with executing the job functions of the proposed legislation.

Expenditure Narrative:

Revenue

Revenue Type	FYE 22	FYE 23	FYE 24	Recurring (R) or Non-recurring (NR)	Fund
General Fund	\$ _____	\$ _____	\$ _____	_____	_____
Special Revenue	\$ _____	\$ _____	\$ _____	_____	_____
CIP	\$ _____	\$ _____	\$ _____	_____	_____
Enterprise	<u>\$20,867.70</u>	<u>\$21,262.10</u>	<u>\$21,663.95</u>	R	_____
Internal Service	\$ _____	\$ _____	\$ _____	_____	_____
Trust and Agency	\$ _____	\$ _____	\$ _____	_____	_____
Federal	\$ _____	\$ _____	\$ _____	_____	_____
Other	\$ _____	\$ _____	\$ _____	_____	_____
Total	<u>\$20,867.70</u>	<u>\$21,262.10</u>	<u>\$21,663.95</u>		

Revenue Narrative:



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

9/1/2022

8/15/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Companies 8110 E Union Avenue Suite 100 Denver CO 80237 (303) 414-6000	CONTACT NAME: PHONE (A/C, No. Ext): E-MAIL ADDRESS:	FAX (A/C, No):	
	INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED 1512430 Presbyterian Medical Services, Inc PO Box 2267 Santa Fe, NM 87501-4391	INSURER A: Philadelphia Indemnity Insurance Co.		18058
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES

CERTIFICATE NUMBER: 18747744

REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$1M Ea Violent Event GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	N	PHPK2321779	9/1/2021	9/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 20,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	PHPK2321779	9/1/2021	9/1/2022	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y	N	PHUB784150	9/1/2021	9/1/2022	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000 \$ XXXXXXXX
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	NOT APPLICABLE			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ XXXXXXXX E.L. DISEASE - EA EMPLOYEE \$ XXXXXXXX E.L. DISEASE - POLICY LIMIT \$ XXXXXXXX
A	Professional Liability	N	N	PHPK2321779	9/1/2021	9/1/2022	\$2,000,000 Agg
A	Sexual Abuse/Molestation			PHPK2321779	9/1/2021	9/1/2022	\$1,000,000 Ea Prof Inc \$1,000,000 Agg \$1,000,000 Ea Abusive Conduct

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

THIS CERTIFICATE SUPERSEDES ALL PREVIOUSLY ISSUED CERTIFICATES FOR THIS HOLDER, APPLICABLE TO THE CARRIERS LISTED AND THE POLICY TERM(S) REFERENCED.

RE: 1121 Alto St., Santa Fe, NM 87501. City of Santa Fe, its directors, officials, officers, employees, agents and volunteers are included as an Additional Insureds as respect to General Liability if required by written contract.

CERTIFICATE HOLDER

18747744
 City of Santa Fe
 ATTN: City Manager
 P. O. Box 909
 Santa Fe NM 87504

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.









CM ECON DEV PRESBYTERIAN

Final Audit Report

2022-08-17

Created:	2022-08-17
By:	Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
Status:	Canceled / Declined
Transaction ID:	CBJCHBCAABAkie9L812rFk3ygBdzMrgw-pPsIKKGT9A

"CM ECON DEV PRESBYTERIAN" History

-  Document created by Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
2022-08-17 - 8:13:05 PM GMT- IP address: 63.232.20.2
-  Document emailed to jlovato@santafenm.gov for signature
2022-08-17 - 8:15:17 PM GMT
-  Email viewed by jlovato@santafenm.gov
2022-08-17 - 8:35:52 PM GMT- IP address: 104.47.65.254
-  Signer jlovato@santafenm.gov entered name at signing as JoAnn Lovato
2022-08-17 - 8:37:16 PM GMT- IP address: 63.232.20.2
-  Document e-signed by JoAnn Lovato (jlovato@santafenm.gov)
Signature Date: 2022-08-17 - 8:37:17 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Andy Hopkins (ajhopkins@santafenm.gov) for signature
2022-08-17 - 8:37:19 PM GMT
-  Email viewed by Andy Hopkins (ajhopkins@santafenm.gov)
2022-08-17 - 8:40:04 PM GMT- IP address: 104.47.65.254
-  Document declined by Andy Hopkins (ajhopkins@santafenm.gov)
Decline reason: please include the org/object on the Sum of Contracts. Thanks!
2022-08-17 - 8:41:43 PM GMT- IP address: 63.232.20.2



City of Santa Fe, New Mexico

Memorandum



DATE: August 9, 2022

TO: Mayor Alan Webber
City Councilors

VIA: Alexis Lotero, Interim Finance Department Director
Fran Dunaway, Chief Procurement Officer
Rich Brown, Director, Community Development Department

FROM: Alexandra Ladd, Director, Office of Affordable Housing
Terry Lease, Asset Development Manager, Office of Economic Development

ITEM AND ISSUE:

Request for the Approval of Real Estate Donation Agreement to Convey the Property Located at 635 Alto Street from the City (“Donor”) to Habitat for Humanity (“Donee”) for the Purposes of Developing Five (5) Affordable Homes for Sale to Income-Qualified Homebuyers; (Alexandra Ladd, agladd@santafenm.gov, 505-303-9868; Terry Lease, tjlease@santafenm.gov, 505-629-2206).

BACKGROUND AND SUMMARY:

The disposition of this City-owned site, located at 635 Alto Street, is intended to be the first of a series of dispositions of under-used City-owned property for the purposes of stimulating the creation of housing units on infill lots. Recognizing that land acquisition and other forms of site control are significant hurdles in the development process, and that developing affordable units is financially challenging, the City seeks to provide a developable lot through a real estate donation/disposition agreement.

The donation of the Site was preceded by City of Santa Fe Resolution 2021-38 that expressed the City's intent to donate the Site to a developer certified as a “Qualifying Grantee” under the New Mexico Affordable Housing Act for development of at least five low-priced dwelling units (LPDU), as defined by Santa Fe City Code, 26-2.

PROCUREMENT METHOD:

In September of 2021, the City released a request for qualifications (“RFQ 635 Alto LPDU”) seeking a qualifications for real estate developer(s), affordable housing builders and other qualified parties with the capacity to build affordable housing in the city of Santa Fe. Four respondents proposed development concepts that were evaluated based on four factors: 1) development program (# of units, household income targets, sustainability and green building features, etc.); 2) concept design (site plan that showed how land use code would be applied including historic design requirements); 3) experience & financial ability (project team expertise, business references, examples of past projects and evidence of financial stability); 4) project feasibility (sources/uses budget and operating budget, absorption of sales, schedule for completion).

The project team that scored the highest was headed by Santa Fe Habitat for Humanity which proposed building five homes, arranged in a traditional Santa Fe compound. The building materials are contemporary modular components provided through a partnership with a local design firm, B. Public. The objective is to reduce construction time and construction waste and maximize energy efficiency of the finished homes without sacrificing quality, affordability or design aesthetics. A land use restriction will ensure that the homes are not only sold at affordable home sales prices to income-certified homebuyers, but that affordability is controlled with perpetual liens.

CONTRACT NUMBER:

The FY23 Munis contract number is 3203402

FUNDING SOURCE:

N/A

ACTION REQUESTED:

The Offices of Affordable Housing and Economic Development respectfully request your review and approval of the attached Real Estate Donation Agreement.

ATTACHMENTS:

Real Estate Donation Agreement

RFQ 635 Alto LPDU

Deed

Certificate of Insurance

Summary of Contracts

Procurement Checklist

VOTE SUMMARY



Meeting Name - Public Works and Utilities Committee

Meeting Start Date - 09/26/2022

Meeting Committee - Public Works and Utilities Committee

Item Title - Request for Approval of Real Estate Donation Agreement to Convey the Property Located at 635 Alto Street from the City to Habitat for Humanity for the Purposes of Developing Five (5) Low-Priced Dwelling Units (LPDU) for Sale to Income-Qualified Homebuyers; (Alexandra Ladd, Office of Affordable Housing, Director: agladd@santafenm.gov; and Terry Lease, Office of Economic Development, Asset Development Manager: tjlease@santafenm.gov, 505-629-2206).

Committee Review:

Public Works & Utility Committee: 9/26/2022

Finance Committee: 10/03/2022

Quality of Life Committee: 10/05/22

Governing Body: 10/12/2022

Item Type - contract

Item Owner -

Item Sponsor -

Item Tracking Number - 22-15680

Motion Type - Approve

Motion Mover - Amanda Chavez

Motion Seconder - Lee Garcia

Motion Status - approved

Vote For Count - 5

Vote Against Count - 0

Vote Abstain Count - 0

Vote Absent Count - 0

VOTE SUMMARY



City of Santa Fe

Vote For Names - Chris Rivera, Michael Garcia, Carol Romero-Wirth, Lee Garcia, Amanda Chavez

Vote Against Names -

Vote Abstain Names -

Vote Absent Names -

User Name - Jamie-Rae Diaz

User Email - jldiaz@santafenm.gov

VOTE SUMMARY



Meeting Name - Finance Committee

Meeting Start Date - 10/03/2022

Meeting Committee - Finance Committee

Item Title - Request for Approval of Real Estate Donation Agreement to Convey the Property Located at 635 Alto Street from the City to Habitat for Humanity for the Purposes of Developing Five (5) Low-Priced Dwelling Units (LPDU) for Sale to Income-Qualified Homebuyers. (Alexandra Ladd, Office of Affordable Housing, Director: agladd@santafenm.gov; and Terry Lease, Office of Economic Development, Asset Development Manager: tjlease@santafenm.gov, 505-629-2206).

Committee Review:

Public Works & Utility Committee: 9/26/2022

Finance Committee: 10/03/2022

Quality of Life Committee: 10/05/22

Governing Body: 10/12/2022

Item Type - contract

Item Owner -

Item Sponsor -

Item Tracking Number - 22-15680

Motion Type - Approve

Motion Mover - Signe Lindell

Motion Secunder - Jamie Cassutt

Motion Status - approved

Vote For Count - 5

Vote Against Count - 0

Vote Abstain Count - 0

Vote Absent Count - 0

VOTE SUMMARY



City of Santa Fe

Vote For Names - Renee Villarreal, Carol Romero-Wirth, Signe Lindell, Jamie Cassutt, Chris Rivera

Vote Against Names -

Vote Abstain Names -

Vote Absent Names -

User Name -Carolynn Roibal

User Email - ciroibal@santafenm.gov



City of Santa Fe, New Mexico

Memorandum



DATE: September 19, 2022

TO: Mayor Alan Webber
City Councilors

VIA: Rich Brown, Director, Community Development Department _____

FROM: Alexandra Ladd, Director, Office of Affordable Housing AL
Terry Lease, Asset Development Manager, Office of Economic Development TL

ITEM AND ISSUE:

Request for the Approval of Real Estate Donation Agreement to Convey the Property Located at 635 Alto Street from the City ("Donor") to Habitat for Humanity ("Donee") for the Purposes of Developing Five (5) Affordable Homes for Sale to Income-Qualified Homebuyers; (Alexandra Ladd, agladd@santafenm.gov, 505-303-9868; Terry Lease, tjlease@santafenm.gov, 505-629-2206).

BACKGROUND AND SUMMARY:

The disposition of this City-owned site, located at 635 Alto Street, is intended to be the first of a series of dispositions of under-used City-owned property for the purposes of stimulating the creation of housing units on infill lots. Recognizing that land acquisition and other forms of site control are significant hurdles in the development process, and that developing affordable units is financially challenging, the City seeks to provide a developable lot through a real estate donation/disposition agreement.

The donation of the Site was preceded by City of Santa Fe Resolution 2021-38 that expressed the City's intent to donate the Site to a developer certified as a "Qualifying Grantee" under the New Mexico Affordable Housing Act for development of at least five low-priced dwelling units (LPDU), as defined by Santa Fe City Code, 26-2.

PROCUREMENT METHOD:

In September of 2021, the City released a request for qualifications ("RFQ 635 Alto LPDU") seeking a qualifications for real estate developer(s), affordable housing builders and other qualified parties with the capacity to build affordable housing in the city of Santa Fe. Four respondents proposed development concepts that were evaluated based on four factors: 1) development program (# of units, household income targets, sustainability and green building features, etc.); 2) concept design (site plan that showed how land use code would be applied including historic design requirements); 3) experience & financial ability (project team expertise, business references, examples of past projects and evidence of financial stability); 4) project feasibility (sources/uses budget and operating budget, absorption of sales, schedule for completion).

The project team that scored the highest was headed by Santa Fe Habitat for Humanity which proposed building five homes, arranged in a traditional Santa Fe compound. The building materials are contemporary modular components provided through a partnership with a local

design firm, B. Public. The objective is to reduce construction time and construction waste and maximize energy efficiency of the finished homes without sacrificing quality, affordability or design aesthetics. A land use restriction will ensure that the homes are not only sold at affordable home sales prices to income-certified homebuyers, but that affordability is controlled with perpetual liens.

CONTRACT NUMBER:

The FY23 Munis contract number is 3203402

FUNDING SOURCE:

N/A

ACTION REQUESTED:

The Offices of Affordable Housing and Economic Development respectfully request your review and approval of the attached Real Estate Donation Agreement.

ATTACHMENTS:

Real Estate Donation Agreement

RFQ 635 Alto LPDU

Deed

Summary of Contracts

Procurement Checklist

REAL ESTATE DONATION AGREEMENT

This REAL ESTATE DONATION AGREEMENT ("**Agreement**") dated this _____ day of _____, 2022, by and between the City of Santa Fe, ("**City**" or "**Donor**") and Habitat for Humanity, a private, not -for-profit, New Mexico organization (or "**Donee**").

WHEREAS, a city may donate land or money for the construction, renovation, or purchase of affordable housing pursuant to NM Const. Art. 9, Section 14 and NMSA 1978, Section 6-27-1, et seq.;

WHEREAS, Donor is the fee simple owner of 635 Alto Street, Santa Fe, NM ("**Site**") that is the subject of the Request for Qualifications ("**RFQ**"), identified as "RFQ: 635 Alto LPDU," was released on September 15, 2021, and four submissions were received; and

WHEREAS, it is the policy of the City to provide incentives and encourage proposals that support the production, acquisition and redevelopment of affordably priced homes in mixed income developments; and

WHEREAS, the development of the Site has been contemplated through several efforts, beginning in 2009, when the City hosted the "Greenworks Design Competition" which called for designs for a multi-income, multi-unit structure that met all land use and historic code requirements, achieved sustainability metrics as determined by "Green Communities" standards, and was financially feasible to develop; and

WHEREAS, the donation of the Site conforms to the City's Five-Year Strategic Housing Plan "Affordable Housing Element," which was adopted in conformance to the Affordable Housing Act by Ordinance No. 2007-23 pursuant to the express statutory authority conferred upon municipalities to enact a housing code in NMSA 1978, Section 3-1 7-6A(8); and

WHEREAS, the donation of the Site was preceded by City of Santa Fe Resolution 2021-38 that expressed the City's intent to donate the Site to a developer certified as a "Qualifying Grantee" under the New Mexico Affordable Housing Act for development of at least five low-priced dwelling units; and

WHEREAS, Donee submitted a RFQ cover letter dated October 13, 2021 and a 15-page RFQ submission document entitled "Santa Fe Habitat for Humanity Affordable Housing Project" (collectively "**RFQ Submission**"), and the Evaluation Committee subsequently selected the Donee as a development partner, and eventual owner of the Site, for approval by the Governing Body; and

WHEREAS, the City of Santa Fe acknowledges the Donee as a "Qualified Grantee" for purposes of local affordable housing ordinances and compliance with the New Mexico Affordable Housing Act; and

WHEREAS, this is an "arm's length" transaction and no identity of interest exists between

the Donor and the Donee, their staff, Board of Directors, or Elected Officials; and

WHEREAS, Donee acknowledges that the City has no obligations or responsibilities with regard to development of the Site other than the transfer of the Site for those purposes and as warranted in the deed.

Now therefore, it is agreed as follows:

1. SITE

Donor is the fee owner of 635 Alto Street, Santa Fe, New Mexico as depicted on the Boundary Survey Plat recorded in the office of the County Clerk of Santa Fe County, New Mexico, on January 4, 2011, identified as Instrument #1622082, Book 726, Page 006, which is attached hereto as **Exhibit "A"**

2. DONOR'S OWNERSHIP

Donor warrants and represents that it is the sole fee simple owner of the Site and has all necessary authority to sell or donate the Site. There are no other contracts for sale or options involving the Site and no other party has any right, title, or interest in the Site and there are no leases affecting or relating to the Site. Between the date Donor executes this Agreement and Settlement, Donor shall not subject the Site to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, rights of way, or agreements, or take any other action affecting or modifying the status of title or otherwise affecting the Site without the written consent of the Donee.

3. EFFECTIVE DATE

The date upon which this Agreement shall be finally executed by the authorized representative of Donee and Donor shall be the effective date ("Effective Date") hereof.

4. CONDITIONS PRECEDENT TO CONVEYANCE

Donor hereby agrees to convey to Donee and Donee hereby agrees to accept the donation from Donor, upon the following conditions:

- a. Donee shall successfully obtain approval of its development plan;
- b. Donee shall secure all land use entitlement approvals required to develop the Site;
- c. Donee shall obtain all financing needed to accomplish the project;

5. ACTIONS OR SUITS

Unless set forth by Donor in an attachment to this Agreement, Donor warrants and represents that there are no actions or suits in law or equity or proceedings by any governmental agency now pending or, to the knowledge of the Donor, threatened against Donor in connection with the Site, and there is no outstanding order, writ, injunction, or decree of any court or governmental agency affecting the Site.

6. PROFFERS AND COMMITMENTS.

Donor represents there has not been made and will not be made, without Donee's prior written consent, any proffers or other commitments relating to the Site, which would impose any obligation on Donee or its successors and assigns, after Settlement as described in Paragraph 9 below, to make any contribution of money or dedications of land or to construct, install, or maintain any improvements of a public or private nature on or off the Site.

7. OTHER AGREEMENTS.

Donor warrants and represents that the execution and delivery of this Agreement, the completion of the transaction(s) contemplated hereby, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Donor is a party or by which it or the Site is bound, or any judgment, decree, order, or award of any court, governmental body, or arbitrator, or any law, rule, or regulation applicable to Donor.

8. SETTLEMENT.

- a. Settlement and delivery of possession shall be within forty-five (45) business days of the approval of all Conditions Precedent to Conveyance listed in Section 4 of this agreement, allowing a reasonable time for preparation of documents ("Settlement"). Settlement shall be held at the offices of Stewart Title Company, as the "Settlement Agent," or at such other place as the parties may agree. Donor shall deliver to Donee, at Settlement, a fully executed special warranty deed conveying the Site in fee simple to Donee, ("Deed"). Donee will pay for all costs associated with the closing.
- b. Donor shall deliver to Donee at Settlement an affidavit, on a form acceptable to Donee or Donee's title insurance company, signed by Donor, that no labor or materials have been furnished to the Site within the statutory period for the filing of mechanics' or materialmen's liens against the Site, or if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full.
- c. Donor agrees to deliver to Donee or Settlement Agent the following at or prior to Settlement:
 - (i) The fully executed Special Warranty Deed, see example as **Exhibit B**;
 - (ii) The signed closing or settlement statement prepared or approved by Settlement Agent; and
 - (iii) Any other documents reasonably required by Settlement Agent or Donee.
- d. Donee agrees to record a Land Use Restriction on the property that will be for 45 years, see example as **Exhibit C**.
- e. Donee agree that upon the sale of each LPDU, or a similarly price-restricted residence, Donee shall execute and record a "Declaration of Restrictive Covenants, Right of First Refusal and Equity Share" document substantially in the form of the attached **Exhibit D**, which may be amended from time-to-time, thus assuring the Site will be used for price-restricted residences in perpetuity

9. TITLE.

The Site shall be conveyed free from all mortgages, deeds of trust, liens, security interests, and other financial encumbrances.

10. EXPENSES OF SETTLEMENT.

- a. Donee shall pay for its own attorney's fees as well as other charges customarily paid by a Donee of real estate in New Mexico.
- b. Donee shall pay for the preparation of any documents it is required to provide hereunder, and its own attorney's fees as well as other charges customarily paid by a Donor of real estate in New Mexico.
- c. All real estate taxes, assessments, utility charges, and rent, if any, shall be prorated as of the date conveyance is executed.

11. USE OF SITE.

- a. Donee shall use the Site solely for the purpose of developing low priced dwelling units (“LPDU”), or similarly price-restricted residences, as provided for in the RFQ and RFQ Submission.

12. DEFAULT.

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or inequity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default.

13. PRIOR AGREEMENTS MERGER.

This Agreement supersedes any and all prior understandings and agreements between the parties and constitutes the entire agreement between them. No representations, warranties, conditions, or statements, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended, altered, or modified except by an instrument in writing signed by the party sought to be charged therewith.

12. NOTICES.

Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid, or if delivered in hand, as follows:

If delivered or mailed to

Donor: City of Santa Fe
Attn. City Attorney’s Office
PO Box 909
Santa Fe, NM 87504-0909

With a copy to:

City of Santa Fe
Attn. Asset Development Manager
500 Market Street, Suite 200
Santa Fe, NM 87504

Donee:

Habitat for Humanity
Attn. Mr. Kurt Krahn, Executive Director
2520 Camino Entrada, Ste. A
Santa Fe, NM 87507-4885

13. GOVERNING LAW.

Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the STATE OF NEW MEXICO.

14. CERTIFICATES AND DOCUMENTS INCORPORATED.

The following certificates and documents shall be attached hereto and incorporated herein to the extent they are consistent with the terms and conditions of this Agreement:

- a. RFQ: 635 Alto LPDU.
- b. Donee RFQ submission cover letter dated October 13, 2021 (1 page).
- c. Donee RFQ submission entitled "Santa Fe Habitat for Humanity Affordable Housing Project (15 pages).

15. MISCELLANEOUS.

Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors, and permitted assigns. No assignment of this Agreement shall be permitted except with the written consent of the other party, which consent shall not be withheld unreasonably. The warranties, representations, and terms of this Agreement shall survive delivery of the Deed and shall not be merged therein.

16. EXECUTION OF CONVEYANCE.

The approval and execution of this Donation Agreement grants the authority to fully execute the conveyance of the property via special warranty by the Mayor.

[The remainder of this page is blank. Signatures are on the following pages.]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

DONEE:

CITY OF SANTA FE

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE BUSTOS MIHELICIC, CITY CLERK

APPROVED AS TO FORM FOR LEGAL SUFFICIENCY:

Andrea Salazar

Andrea Salazar (May 20, 2022 14:05 MDT)

ASSISTANT CITY ATTORNEY

APPROVED AS TO FINANCE:

EMILY K. OSTER, FINANCE DIRECTOR

HABITAT FOR HUMANITY

Kurt Krahn

KURT KRAHN, EXECUTIVE DIRECTOR

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this 25 day of April, 2022 by Kurt Krahn,
Executive Director of Habitat for Humanity.

Seal:

STATE OF NEW MEXICO
NOTARY PUBLIC
MARILYN E. PERRYMAN
COMMISSION # 1112117
EXPIRES MAY 20, 2023

Marilyn E. Perryman
Notary Public

My Commission Expires:

5/20/2023

EXHIBIT B
To the Donation Agreement

SPECIAL WARRANTY DEED

The City of Santa Fe, a Municipal Corporation, whose address is 200 Lincoln Avenue, Santa Fe, New Mexico, 87504-0909, for no consideration paid, grants to Habitat for Humanity, a private, not -for-profit organization, whose address is 2520 Camino Entrada Ste. A, Santa Fe, NM 87507, the following described real estate in Santa Fe County, New Mexico:

A parcel of land lying and being situate within the municipal limits of the City of Santa Fe, County of Santa a distance of 112.62 feet to a point; thence S. 89° 37' 07" E., a distance of 109.63 feet to a point; thence S. 17° 43' 57" W., a distance of 119.93 feet to the point and place of beginning.

Being and intended to be Parcel #122 as shown and delineated on plat of survey by Joseph L Pacheco, P.E. & L.S. No. 3905, entitled "PLAT OF SURVEY SHOWING LANDS IN GUADALUPE NEIGHBORHOOD REPLAT OF PORTIONS OF KINGS MAP BLOCK 61 & 62 Fe, State of New Mexico, being more particularly bounded and described as follows:

Beginning at a point for the southeast corner of the parcel which is a point that bears S. 5° 55' 5" E., a distance of 21.31 feet to the center of City of Santa Fe sanitary sewer manhole #20 Line A-6. Thence from said point of beginning, N. 88° 06' 05" W., a distance of 82.42 feet to a point; thence N. 4° 43' 17" E.,

PLAT-I.". The plat is recorded in the Office of the County Clerk of Santa Fe County, New Mexico, as Document No. 438267 in Plat Book 69, page 7. Parcel contains 10910 square feet more or less.

with special warranty covenants, together with all and singular the rights and appurtenances thereto in anywise belonging including, without limitation, all rights, privileges, and easements, and conditions, and subject to covenants, restrictions, rights, rights-of-way and easements now of record, if any. Also subject to those restrictions and conditions as contained on "Real Estate Donation Agreement between the City of Santa Fe and Habitat for Humanity, dated _____, 2022, the Land Use Restriction Agreement, dated _____, and on "Declaration of Affordable Housing Restrictive Covenant" by Habitat for Humanity, dated _____, 2022.

This deed is an absolute conveyance, the Grantor having donated the above described property to the Grantee for a fair and adequate consideration. Grantor declares that this conveyance is freely and fairly made to Grantee, and by its acceptance hereof, does hereby assume and agree to pay all obligations and any ad valorem taxes, following the date of recording of this deed in the records of the Santa Fe County Clerk.

Witness my hand and seal this _____ day of _____, 20____.

CITY OF SANTA FE

ALAN M. WEBBER, MAYOR

ATTEST:

KRISTINE BUSTOS MIHELICIC, CITY CLERK

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this ___ day of _____, 20___ by Alan M. Webber,
Mayor of the City of Santa Fe.

ACCEPTANCE by Habitat for Humanity, a private, not -for-profit organization of donation of real estate
and conditioning imposed thereon by Grantor.

HABITAT FOR HUMANITY

KURT KRAHN, EXECUTIVE DIRECTOR

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS.
COUNTY OF SANTA FE)

STATE OF NEW MEXICO
NOTARY PUBLIC
MARILYN E. PERRYMAN
COMMISSION # 1112117
EXPIRES MAY 20, 2023

This instrument was acknowledged before me this 25 day of April, 2022 by Kurt Krahn,
Executive Director of Habitat for Humanity.

Expires, 5/20/2023
Marilyn E. Perryman

**EXHIBIT C
To the Donation Agreement**

**DECLARATION OF
AFFORDABLE HOUSING
RESTRICTIVE COVENANT**

Habitat for Humanity, a private, not-for-profit, New Mexico organization, (the "Declarant") hereby declares, until December 31, 2067, that the property described in attached **Exhibit A** (the "Property") shall be used for residential housing for persons or households of low or moderate income within the meaning of New Mexico Statutes Annotated Chapter 6, Article 27 and consistent with Santa Fe City Code Chapter 26. This covenant is for the benefit of, and is enforceable by, the City of Santa Fe (the "City"). This covenant shall run with the land until December 31, 2067, at which point this covenant shall expire and be of no further force and effect without any further action being necessary from the City, the Declarant, or the then owner of the property.

BY:

HABITAT FOR HUMANITY

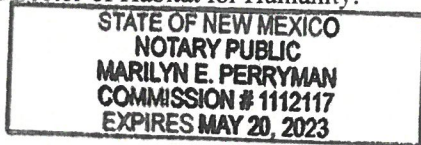

KURT KRAHN, EXECUTIVE DIRECTOR

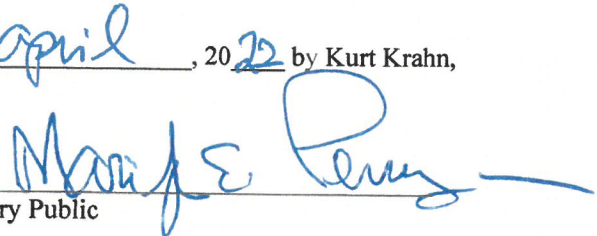
ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this 25 day of April, 2022 by Kurt Krahn, Executive Director of Habitat for Humanity.

Seal:




Notary Public

My Commission Expires:

5/20/2023

EXHIBIT A
To the Declaration of Affordable
Housing Restrictive Covenant

A parcel of land lying and being situate within the municipal limits of the City of Santa Fe, County of Santa Fe, State of New Mexico, being more particularly bounded and described as follows:

Beginning at a point for the southeast corner of the parcel which is a point that bears S. 5° 55' 5" E., a distance of 21.31 feet to the center of City of Santa Fe sanitary sewer manhole #20 Line A-6. Thence from said point of beginning, N. 88° 06' 05" W., a distance of 82.42 feet to a point; thence N. 4° 43' 17" E., a distance of 112.62 feet to a point; thence S. 89° 37' 07" E., a distance of 109.63 feet to a point; thence S. 17° 43' 57" W., a distance of 119.93 feet to the point and place of beginning.

Being and intended to be Parcel #122 as shown and delineated on plat of survey by Joseph L Pacheco, P.E. & L.S. No. 3905, entitled "PLAT OF SURVEY SHOWING LANDS IN GUADALUPE NEIGHBORHOOD REPLAT OF PORTIONS OF KINGS MAP BLOCK 61 & 62 PLAT-I.". The plat is recorded in the Office of the County Clerk of Santa Fe County, New Mexico, as Document No. 438267 in Plat Book 69, page 7. Parcel contains 10910 square feet more or less.

REQUEST FOR QUALIFICATIONS

AFFORDABLE HOUSING SITE DEVELOPMENT

Location: 635 Alto Street, Santa Fe, New Mexico

Issued by:

**The City of Santa Fe's
Asset Development Office
AND
Office of Affordable Housing**



RFQ: 635 Alto LPDU

RELEASE DATE: September 15, 2021

SUBMISSION DUE DATE: October 13, 2021

I. INTRODUCTION

The City of Santa Fe (“City”) is seeking qualifications for real estate developers, affordable housing builders and providers and other qualified parties as provided for in Paragraph VI below (“Respondent(s)” or “Respondent Team(s),” collectively “Respondents”) with the capacity and qualifications to build affordable housing in the city of Santa Fe.

The disposition of this site, the subject of this Request for Qualifications (“RFQ”), is intended to be the first of a series of dispositions of under-used City-owned property for the purposes of stimulating the creation of housing units on infill lots. Recognizing that land acquisition and other forms of site control are significant hurdles in the development process, and that developing affordable units is financially challenging, this RFQ provides an opportunity for non- and for-profit developers and builders to attain a developable lot through a real estate donation/disposition agreement.

II. PURPOSE OF THIS REQUEST FOR QUALIFICATIONS

The City is issuing this RFQ to receive submissions (“Submission(s)”) from Respondents for consideration in developing five (5) housing units to be designated as Low Priced Dwelling Units (“LPDU”) subject to the provisions, and as defined by, Santa Fe City Code (“SFCC”) 26-2. The link to SFCC 26-2 is:

https://library.municode.com/nm/santa_fe/codes/code_of_ordinances?nodeId=CHXXVIHO_26-2LOPRDWUN

III. PROJECT SITE

The address of the site is 635 Alto Street in Santa Fe, New Mexico (“Site”). The Site is further described as Lot 9A; Parcel 122 of Document #438267; UPC#: 1053099447224; Deed: Book 430 & Page 688 and it is located in Santa Fe’s Westside Guadalupe Historic District. It is one-quarter (1/4) acre in size (10,910 square feet) and the dimensions are: 112.62 x 119.93 x 82.42 x 109.63. A Map of the site can be found [HERE \(1\)](#). Land use requirements that apply to this site can be found [HERE. \(2\)](#)

IV. NEW MEXICO AFFORDABLE HOUSING ACT

The donation of this Site must be in conformance with the New Mexico Affordable Housing Act (the “Act”) which provides an exemption to the State of New Mexico’s Anti-Donation Clause. The Act determines eligible uses for donations of public land, cash, buildings or infrastructure. All beneficiaries of the donated value must be income-qualified as earning no more than 120% of the area median income (“AMI”), determined through a Department of Housing and Urban

Development (HUD) approved income certification process. Income limits for 2021 can be found [HERE \(3\)](#).

V. BACKGROUND INFORMATION

This Site was the subject of the Greenworks Design Competition sponsored by the City in 2008-09. The competition called for designs that reflected quality and innovation, achieved green building standards, met all land use requirements, conformed to the City's inclusionary zoning program, provided a reasonable budget, and could serve as a replicable model for infill and green buildings. The competition also called for proposed projects that demonstrated responsiveness to neighborhood context, historic design overlay standards and public input. Materials related to the design competition can be viewed [HERE \(4\)](#).

One of the winning designs from 2009 proposed five (5) units constructed on the site, of varying affordability from deeply subsidized to market rate. Later, the City approved Resolution 2010-57 which called for completing predevelopment due diligence, making design changes as needed and drafting construction drawings. The winning architect was hired as the City's agent and the design was submitted to and approved by the Santa Fe Historic Districts Review Board in 2011. While this design approval is expired, it serves as a "proof of concept" and the City encourages respondents to this RFQ to replicate aspects of the design approach as functionally appropriate. The design can be reviewed [HERE \(5\)](#).

VI. ELIGIBILITY

Eligible Respondents to this solicitation include developers, contractors and sponsors of affordable housing, including, and not limited to, partnerships, corporations, limited liability companies, joint ventures, public/private partnerships and non-profit organizations that are organized under state, local, or tribal laws. Respondents must have proven financial capacity and organizational experience to carry out the desired project described in the Submission. Additionally, the MFA Affordable Housing Act Rules require the City of Santa Fe certifies that the respondent is a "Qualifying Grantee" prior to approving the disposition, as described in city code

https://library.municode.com/nm/santa_fe/codes/code_of_ordinances?nodeId=CHXXVIHO_26-3AFHOTRFU

VII. LETTER OF INTEREST

A non-binding letter of interest may be emailed to Alexandra Ladd, Director, Office of Affordable Housing at agladd@santafenm.gov. This will ensure that all prospective respondents receive notice of changes to this RFQ process. The letter of interest is a simple

note indicating that you intend to respond to the RFQ, your organizational affiliation, and your contact information.

VIII. EVALUATION FACTORS

Submissions are required to respond to the following evaluation factors to determine whether the City's objectives for the RFQ are met:

- A. Development Program.** Provide a narrative description of the proposed project, including total development square footage, number of units, unit types, number of bedrooms, household income targets, housing tenure, supportive services/amenities connected to the built project, sustainability and green building features, and highlight any innovation that makes this approach unique. This may also include any co-ownership, community land trust or other non-traditional funding sources or models of operations.
- B. Concept Design.** Provide 1) a site plan that illustrates set-backs, sustainable site aspects, landscape design and materials, outdoor amenities, parking, set-backs, automobile and pedestrian circulation, other environmental or design features; 2) building design that illustrates massing and solar orientation, construction type, materials, green building elements, design elements, strategies that may enable future adaptation and/or densification of the site, expected utility use, and other environmental or design features; 3) a design narrative that describes how proposed project will satisfy design requirements of the Santa Fe Residential Green Building code, historic design requirements, and architectural design requirements.
- C. Experience/Financial Ability.** Provide 1) organizational chart and resumes of the development team, including name and role, identifies project manager and who is empowered to make decisions for the team; 2) project details for similar projects to illustrate experience and expertise, including project name and address, project team (architects, contractors, lenders and investors), project description/development program (total development cost, square footage per residential, retail, office, unit mix, tenure, household income targets, development timeframe) and plans, elevations and images of past projects; 3) business and financial references (at least three references from similar projects completed or in the pipeline within the last 5 years); 4) evidence of financial stability and access to equity (illustrating capacity to leverage funding from a variety of sources – public, private and philanthropic).

D. Project Feasibility. Provide 1) sources and uses budget that includes projected hard (construction) and soft (professional, financing, other) costs, sources of gap financing from private debt, other public financing, and impact investing funds; 2) project operating budget (income and expenses) and identification of subsidy sources over a ten year period for rental projects and/or until 100% absorption of sales for homeownership; 3) letters of interest from financial lenders or investors; 4) schedule that shows benchmarks for completion of proposed project. Project feasibility may also be supported through non-traditional sources such as community land trusts or co-ownership models.

IX. EVALUATION FACTOR SCORING

The following is a summary of Evaluation Factors with point values assigned to each. The weighted factors will be used in the evaluation of each Submission.

A: Development Program	30
Unit Mixture & Affordability Achievements	
Other Amenities & Support Provided (if applicable)	
B: Concept & Design	25
Site Plan & Building Design	
Required Design & Zoning Conformance	
Satisfaction of Desired Design Elements	
C: Experience & Financial Ability	25
Project Team & Resumes	
Demonstrated Past Projects	
Business References	
Financial Stability	
D: Demonstrated Project Feasibility	20
Financial Feasibility	
Project Schedule	
Total	100 POINTS

X. SUBMISSION FORMAT

- 1. Cover Letter.** In addition to the response specifications described below, all Respondents should include a cover letter signed by the person who is empowered by the organization’s governing body to conduct real estate negotiations stating that the information provided is true and correct to the best of the Respondent’s information,

knowledge, and behalf. The letter must provide the contact name and information for the person responsible for the response.

2. All Submissions must be submitted in an electronic format, organized in the order described in Section IX of this RFQ. Each Evaluation Criteria shall be numbered and clearly titled.
3. All Submissions shall be limited to fifteen (15) pages, with the exception of professional licenses, certifications and references, which shall be added as appendices.
4. The Submission should be standard 8 ½" x 11" with a font no smaller than 12 pt. pitch with standard 1" margins.

XI. Award

Award is defined as a signed Real Estate Donation Agreement ("Contract"). The Contract shall be awarded to the Respondent whose submittal is most advantageous to the City, taking into consideration the evaluation factors set forth in this RFQ. In the event that mutually agreeable terms cannot be reached with the selected Respondent, the City reserves the right to enter into negotiations for an Award with the next ranked Respondent(s) without undertaking a new RFQ process.

This RFQ shall be governed by the laws of the State of New Mexico.

XII. RESOURCES AND RESPONSE TIMELINE

1. RFQ Contact:

Alexandra Ladd
Office of Affordable Housing
agladd@santafenm.gov

- 2. Information Session.** All interested applicants may attend an optional pre-deadline orientation session via Zoom meeting. This meeting is to ensure understanding of the RFQ process and requirements for submittal. The virtual meeting will take place on **September 21, 2021** from **11am to noon pm**. Spanish interpretation provided upon request. Email agladd@santafenm.gov for Zoom meeting information. An archived recording of this information session will be made available on the City's YouTube channel for those not able to attend the live meeting: <https://www.youtube.com/user/cityofsantafe/videos>.

- 3. Procurement Library.** Links will be made available on the City's website ([https://www.santafenm.gov/affordable housing](https://www.santafenm.gov/affordable_housing)) to all useful resources referenced in this RFQ, including:

- Map of the Site
 - Summary of Land Use Requirements for project site
 - Area Median Income (AMI) Schedule for 2021
 - Design Competition Info (GreenWorks Book)
 - HDRB –approved Design (2011)
 - Q & A (as described below)
4. **Q & A.** Questions regarding the RFQ may be emailed on an ongoing basis to Alexandra Ladd, Director, Office of Affordable Housing at agladd@santafenm.gov. All answers will be posted and made available to other respondents as part of the Procurement Library. The deadline to submit questions is one week prior to the Submission deadline.
5. **Due Date.** Complete Submissions are due to the Office of Affordable Housing no later than **5PM MDST/MST on October 13, 2021**. Applications will be electronically submitted via email or dropbox to: agladd@santafenm.gov; Attn: Alexandra Ladd, Director, Office of Affordable Housing; RFQ Name: 635 Alto LPDU. **Late or incomplete Submissions will not be accepted.** Amended Submissions, replacing a previous Submission, will only be accepted if received prior to the Submission deadline.

6. **SEQUENCE OF EVENTS SUMMARY**

- | | |
|---|--------------------------|
| a. RFQ Release date | September 15, 2021 |
| b. Letter of Interest | Immediate/ongoing |
| Submit to: agladd@santafenm.gov | |
| c. Information Session | September 21, 2021, 11am |
| Request Zoom Link agladd@santafenm.gov ; recording available at: :
https://www.youtube.com/user/cityofsantafe/videos | |
| d. Deadline to Submit Written Questions | October 6, 2021 |
| e. Deadline to Respond to Written Questions | October 8, 2021 |
| f. Due Date for Submittals | October 13, 2021 |
| No later than 5:00PM Mountain Daylight time | |
| g. Announcement of Selected Project | October 27, 2021 |

SPECIAL WARRANTY DEED

The City of Santa Fe, a Municipal Corporation, whose address is 200 Lincoln Avenue, Santa Fe, New Mexico, 87504-0909, for consideration paid, grants to Habitat for Humanity, a private not-for-profit New Mexico organization, whose address is 2520 Camino Entrada, Ste. A, Santa Fe, New Mexico 87507-4885, the following described real estate in Santa Fe County, New Mexico:

LEGAL DESCRIPTION

A certain parcel of land located at 635 Alto Street, situated within Projected Section 23, Township 17 North, Range 9 East, N.M.P.M., within the Santa Fe Grant, City and County of Santa Fe, New Mexico, being more particularly described as follows, to-wit:

Beginning at a point for the southeast corner of the parcel which is a point that bears S. 5° 55' 05" E., a distance of 21.31 feet to the center of City of Santa Fe sanitary sewer manhole #20 Line A-6; thence from said point of beginning N. 88° 06' 05" W., a distance of 82.42 feet to a point; thence N. 04° 43' 17" E., a distance of 112.62 feet to a point; thence, S. 89° 37' 07" E., a distance of 109.63 feet to a point; thence S. 17° 43' 57" W., a distance of 119.93 feet to the point and place of beginning. Being and intended to be Parcel #122 as shown and delineated on plat of survey by Joseph I. Pacheco, P.E. & L.E. No. 3905, entitled "PLAT OF SURVEY SHOWING LANDS IN GUADALUPE NEIGHBORHOOD...PLAT - I," said plat is recorded in the Office of the County Clerk of Santa Fe County, New Mexico, as Document No. 438,267 in Plat Book 69, page 7.

with warranty covenants, together with all and singular the rights and appurtenances thereto in anywise belonging including, without limitation, all rights, privileges, and easements, and conditions, and subject to covenants, restrictions, rights, rights of way and easements now of record, if any. Grantee, by its acceptance hereof, does hereby assume and agree to pay ad valorem taxes for calendar year 2022, if any, following the date of recording of this Deed in the records of the Santa Fe County Clerk. This deed is an absolute conveyance, the Grantor having donated the above-described property to the Grantee for a fair and adequate consideration. Grantor declares that this conveyance is freely and fairly made.

Witness my hand and seal this _____ day of _____ 2022.

Alan Webber, Mayor of the City of Santa Fe

ACKNOWLEDGMENT

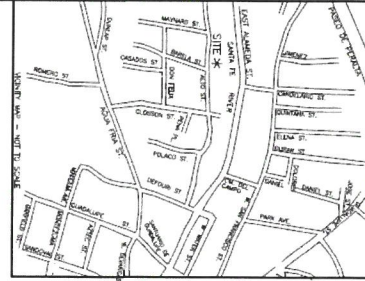
STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this _____ day of _____,
2022 by Alan Webber, Mayor for the City of Santa Fe.

Seal:

Notary Public

My Commission Expires:



LEGEND

- ◻ CITY OF SANTA FE SUPER CONTROL MOUNTAIN
- SUPER MOUNTAIN, Unestablished or fixed
- SUPER MOUNTAIN, Found in field
- ⊙ SUPER MOUNTAIN, Found in field
- ⊙ SHARPEN SUPER MOUNTAIN

(UNAPPROVED) DATA DERIVED FROM PLAT OF SURVEY, SEE MAP 2

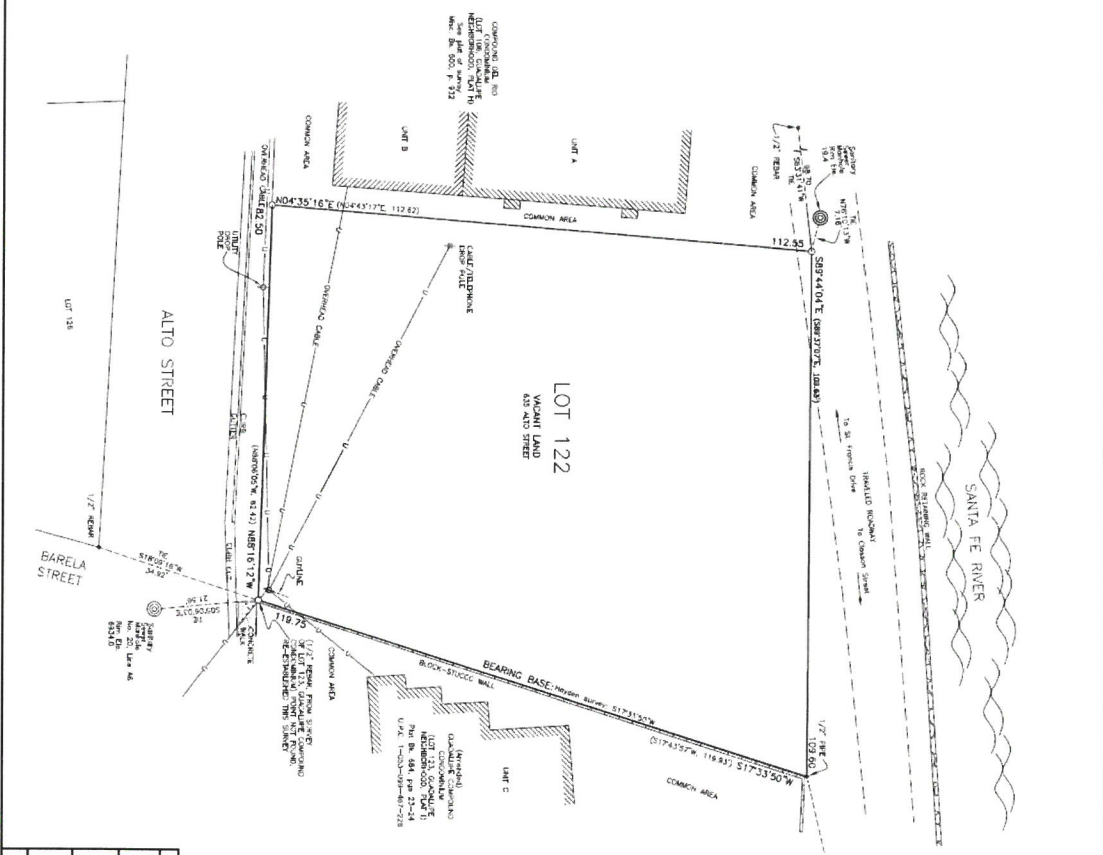
NOTES AND REFERENCE DOCUMENTS

- 1) THE LOTS OF RECORD FOR THIS SURVEY WAS TAKEN FROM A RECENT REVISION OF THE RECORD FOR THIS SURVEY, AS SHOWN ON THE RECORD FOR THE CITY OF SANTA FE, A VARIATIONAL SURVEY, RECORDED DEEDS BOOK 8834, PAGE 688 (DATE: 06-11-2004).
- 2) THE PROPERTY BOUNDARY PORTION OF THIS SURVEY IS SUBJECT TO THE LATER SURVEY OF THE CITY OF SANTA FE, A VARIATIONAL SURVEY, RECORDED DEEDS BOOK 8834, PAGE 688 (DATE: 06-11-2004).
- 3) THE LATER SURVEY RECORDS ARE SUBJECT TO ALL FUTURE REVISIONS, AND THE SURVEY IS SUBJECT TO ALL FUTURE REVISIONS.
- 4) THIS SURVEY WAS CONDUCTED BY THE SURVEYOR AT THE TIME THE SURVEY WAS CONDUCTED, AND THE SURVEYOR IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS THAT MAY OCCUR IN THE FUTURE.
- 5) THE LATER SURVEY RECORDS ARE SUBJECT TO ALL FUTURE REVISIONS, AND THE SURVEY IS SUBJECT TO ALL FUTURE REVISIONS.

SURVEYOR CERTIFICATE

I, **YADUBERA**, being duly sworn, do hereby certify that the foregoing survey and the notes hereon were made by me or under my direct supervision, and that I am a duly licensed and qualified surveyor in the State of New Mexico. My commission expires on **12/31/2008**.

SCOTT WALKER, M.D. 8/31 2007



PUBLIC NOTICE
 NOTICE IS HEREBY GIVEN THAT THE SURVEYOR HAS BEEN APPOINTED TO CONDUCT THE SURVEY OF THE CITY OF SANTA FE, A VARIATIONAL SURVEY, RECORDED DEEDS BOOK 8834, PAGE 688 (DATE: 06-11-2004).

FOR REVIEW
 12-08-10

METRIC INFORMATION FOR COUNTY CLERK
 THE CITY OF SANTA FE, A VARIATIONAL SURVEY, RECORDED DEEDS BOOK 8834, PAGE 688 (DATE: 06-11-2004).

YADUBERA		SCALE: 1" = 10'	1 of 1
LAND SURVEYOR		DATE: 12/08/04	
A. BARRIN, REGISTERED SURVEYOR THE CITY OF SANTA FE of LOT 122 of the GUADALUPE NEIGHBORHOOD, PLAT 1 (SHEET BOOK 883, PAGE 687) SANTA FE, NEW MEXICO			
DATE	12/08/04		
SCALE	1" = 10'		
DATE	12/08/04		



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # _____

Contractor: Habitat for Humanity, Inc.

Description: **Donation Agreement**

Contract Agreement Lease / Rent Amendment

Term Start Date: Upon Execution Term End Date: N/A

Approved by Council Date: _____

Contract / Lease: **Contract**

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)
Donee (Contractor) submitted a RFQ submission document entitled "Santa Fe Habitat for Humanity Affordable Housing Project" and the Evaluation Committee subsequently selected the Donee as a development partner, and eventual owner of the Site, for approval by the Governing Body.

3. **Procurement History:** Note: This does not Fall Under Procurement, this is Real Property.

Raymond Scott Gunter
Raymond Scott Gunter (Sep 26, 2022 10:58 MDT)

Purchasing Officer Review: _____

Comment & Exceptions: _____

Sep 26, 2022

Date: _____

4. **Funding Source:** _____ **Org / Object:** _____

Andy Hopkins
Andy Hopkins (Sep 22, 2022 16:38 MDT)

Budget Officer Approval: _____

Comment & Exceptions: _____

Sep 22, 2022

Date: _____

Staff Contact who completed this form: Alexandra Ladd Phone # 505-955-6346

Email: agladd@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: Habitat for Humanity, Inc.

Procurement Title: Donation Agreement, Affordable Housing Site Development, 635 Alto Street, Santa Fe, HM

Procurement Method: State Price Agreement Cooperative Sole Source Other RFQ

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K


Department Requesting Office of Affordable Housing Staff Name Alexandra Ladd

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees. .

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES	N/A	
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Approved Procurement Checklist (by Purchasing)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	State Price Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	RFP
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Evaluation Committee Report
<input type="checkbox"/>	<input checked="" type="checkbox"/>	ITB
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Bib Tab
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Quotes (3 valid current quotes)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cooperative Agreement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Sole Source Request and Determination Form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Contractors Exempt Letter
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Purchasing Officers approval for exempt procurement
<input type="checkbox"/>	<input checked="" type="checkbox"/>	BAR
<input type="checkbox"/>	<input checked="" type="checkbox"/>	FIR
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Executed Contract, Agreement or Amendment
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Current Business Registration and CRS numbers on contract or agreement
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Summary of Contracts and Agreements form
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Certificate of Insurance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	All documentation presented to Committees
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other: <u>RFQ</u> * This does not fall under Procurement, this is Real Property

<u>Alexandra Ladd</u>	<u>Office of Affordable Housing Director</u>	<u>8/9/22</u>
Department Rep Printed Name (attesting that all information included)	Title	Date
 <u>Raymond 'Scott' Gunter (Sep 26, 2022 10:58 MDT)</u>	<u>Procurement Manager</u>	<u>Sep 26, 2022</u>
Purchasing Officer (attesting that all information is reviewed)	Title	Date

Include all other substantive documents and records of communication that pertain to the procurement and any resulting contract.

*

GB COMMUNITY DEVELOP 635 ALTO STREET

Interim Agreement Report








2022-09-22

Created:	2022-09-20
By:	Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
Status:	Out for Signature
Transaction ID:	CBJCHBCAABAAoyBxuRAZfZF1z5uebMZzHD5FFBZRLRL

Agreement History

Agreement history is the list of the events that have impacted the status of the agreement prior to the final signature. A final audit report will be generated when the agreement is complete.

"GB COMMUNITY DEVELOP 635 ALTO STREET" History

-  Document created by Jimmy Tapia (jptapia@ci.santa-fe.nm.us)
2022-09-20 - 8:49:26 PM GMT- IP address: 63.232.20.2
-  Document emailed to Andy Hopkins (ajhopkins@santafenm.gov) for signature
2022-09-20 - 8:54:36 PM GMT
-  Email viewed by Andy Hopkins (ajhopkins@santafenm.gov)
2022-09-20 - 8:54:43 PM GMT- IP address: 40.94.28.254
-  Email viewed by Andy Hopkins (ajhopkins@santafenm.gov)
2022-09-22 - 9:00:29 PM GMT- IP address: 40.94.29.254
-  Document e-signed by Andy Hopkins (ajhopkins@santafenm.gov)
Signature Date: 2022-09-22 - 10:38:50 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to jlovato@santafenm.gov for signature
2022-09-22 - 10:38:54 PM GMT
-  Email viewed by jlovato@santafenm.gov
2022-09-22 - 10:38:59 PM GMT- IP address: 40.94.28.254

§6-27-1. Short title

Chapter 6, Article 27 NMSA 1978 may be cited as the “Affordable Housing Act”.

§6-27-2. Purpose

The purpose of the Affordable Housing Act is to implement the provisions of Subsections E and F of [Article 9, Section 14 of the constitution of New Mexico](#).

§6-27-3. Definitions

As used in the Affordable Housing Act:

- A. “affordable housing” means residential housing primarily for persons or households of low or moderate income;
- B. “authority” means the New Mexico mortgage finance authority;
- C. “building” means a structure capable of being renovated or converted into affordable housing or a structure that is to be demolished and is located on land that is donated and upon which affordable housing will be constructed;
- D. “governmental entity” means the state, including any agency or instrumentality of the state, a county, a municipality or the authority;
- E. “household” means one or more persons occupying a housing unit;
- F. “housing assistance grant” means the donation, provision or payment by a governmental entity of:
 - (1) land upon which affordable housing will be constructed;
 - (2) an existing building that will be renovated, converted or demolished and reconstructed as affordable housing;
 - (3) the costs of acquisition, development, construction, financing and operating or owning affordable housing; or

(4) the costs of financing or infrastructure necessary to support affordable housing;

G. “infrastructure” includes infrastructure improvements and infrastructure purposes;

H. “infrastructure improvement” includes, but is not limited to:

(1) sanitary sewage systems, including collection, transport, storage, treatment, dispersal, effluent use and discharge;

(2) drainage and flood control systems, including collection, transport, diversion, storage, detention, retention, dispersal, use and discharge;

(3) water systems for domestic purposes, including production, collection, storage, treatment, transport, delivery, connection and dispersal;

(4) areas for motor vehicle use for road access, ingress, egress and parking;

(5) trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for access, ingress, egress and parking;

(6) parks, recreational facilities and open space areas to be used by residents for entertainment, assembly and recreation;

(7) landscaping, including earthworks, structures, plants, trees and related water delivery systems;

(8) electrical transmission and distribution facilities;

(9) natural gas distribution facilities;

(10) lighting systems;

(11) cable or other telecommunications lines and related equipment;

(12) traffic control systems and devices, including signals, controls, markings and signs;

(13) inspection, construction management and related costs in connection with the furnishing of the items listed in this subsection; and

(14) heating, air conditioning and weatherization facilities, systems or services, and energy efficiency improvements that are affixed to real property;

I. “infrastructure purpose” means:

(1) planning, design, engineering, construction, acquisition or installation of infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of the infrastructure;

(2) acquiring, converting, renovating or improving existing facilities for infrastructure, including facilities owned, leased or installed by the owner;

(3) acquiring interests in real property or water rights for infrastructure, including interests of the owner; and

(4) incurring expenses incident to and reasonably necessary to carry out the purposes specified in this subsection;

J. “municipality” means an incorporated city, town or village, whether incorporated under general act, special act or special charter, incorporated counties and H class counties;

K. “public post-secondary educational institution” means a state university or a public community college;

L. “qualifying grantee” means:

(1) an individual who is qualified to receive assistance pursuant to the Affordable Housing Act and is approved by the governmental entity; and

(2) a governmental housing agency, regional housing authority, tribal housing agency, corporation, limited liability company, partnership, joint venture, syndicate, association or nonprofit organization that:

(a) is organized under state, local or tribal laws and can provide proof of such organization;

(b) if a nonprofit organization, has no part of its net earnings inuring to the benefit of any member, founder, contributor or individual; and

(c) is approved by the governmental entity; and

M. “residential housing” means any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for

sale or lease for the construction or location thereon of such a building, structure or portion thereof. “Residential housing” includes congregate housing, manufactured homes, housing intended to provide or providing transitional or temporary housing for homeless persons and common health care, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project.

§6-27-4. Eligibility requirements; non-individual and individual qualifying grantees

A. To be eligible to receive lands, buildings and infrastructure pursuant to [Article 9, Section 14 of the constitution of New Mexico](#), a nonindividual qualifying grantee shall:

(1) have a functioning accounting system that is operated in accordance with generally accepted accounting principles or shall designate an entity that will maintain such an accounting system consistent with generally accepted accounting principles;

(2) have among its purposes significant activities related to providing housing or services to low- or moderate-income persons or households; and

(3) if it has significant outstanding or unresolved monitoring findings from either the authority or its most recent independent financial audit, have a certified letter from the authority or auditor stating that the findings are in the process of being resolved.

B. To be eligible to receive lands, buildings and infrastructure pursuant to [Article 9, Section 14 of the constitution of New Mexico](#), an individual qualifying grantee shall meet the requirements established by the authority pursuant to the Affordable Housing Act.

§6-27-5. State, county, municipalities, instrumentalities of the state and the authority; authorization for affordable housing

The state, including any agency or instrumentality of the state, or a county, a municipality or the authority may:

A. donate, provide or pay all, or a portion, of the costs of land for the construction on the land of affordable housing;

B. donate, provide or pay all or a portion of the costs of conversion or renovation of existing buildings into affordable housing;

C. provide or pay the costs of financing or infrastructure necessary to support affordable housing projects; or

D. provide or pay all or a portion of the costs of acquisition, development, construction, financing, operating or owning affordable housing.

§6-27-6. Requirement for specific law authorizing a housing assistance grant from state

A. The specific grant of authority created in the Affordable Housing Act is the prior approval required pursuant to [Article 9, Section 14 of the constitution of New Mexico](#) to allow the state to provide affordable housing assistance.

B. Funding pursuant to this grant of authority shall be appropriated to the department of finance and administration for disbursement by the authority to a qualifying grantee in accordance with rules promulgated by the authority.

C. Rules adopted by the authority may include provisions for matching or using local, private or federal funds in connection with a specific grant, but matching or using federal funds shall not be prohibited.

D. The authority shall seek comment from the Mortgage Finance Authority Act oversight committee prior to its adoption of rules pursuant to this section.

§6-27-7. Requirement for enactment of an ordinance by a county or a municipality and review by the authority authorizing housing assistance grants

A. A county or municipality may provide housing assistance grants pursuant to [Article 9, Section 14 of the constitution of New Mexico](#) after enactment by its governing body of an ordinance authorizing grants stating the requirements of and purposes of the grants. The ordinance may provide for matching or using local, private or federal funds either through direct participation with a federal agency pursuant to federal law or through indirect participation through programs of the authority. No less than forty-five days prior to enactment, the county or municipality shall submit a proposed ordinance to the authority, which shall review the proposed ordinance to ensure compliance with rules promulgated by the authority pursuant to [Section 6-27-8 NMSA 1978](#). Within fifteen days after enactment of the ordinance, the county or municipality shall submit a certified true copy of the ordinance to the authority. The governing body of the county or municipality shall authorize the transfer or disbursement of housing assistance grant funds only after the qualifying grantee has submitted a budget to the governing body and the governing body has approved the budget.

B. A school district may transfer land or buildings owned by the school district to a county or municipality to be further granted as part or all of an affordable housing grant if the school district and the governing body of the county or municipality enter into a contract that provides the school district with a negotiated number of affordable housing units that will be reserved for employees of the school district.

C. The governing board of a public post-secondary educational institution may transfer land or buildings owned by that institution to a county or municipality; provided that:

- (1) the property transferred shall be granted by the county or municipality as part or all of an affordable housing grant; and

(2) the governing board of the public post-secondary educational institution and the governing body of the county or municipality enter into a contract that provides the public post-secondary educational institution with affordable housing units.

D. Agencies or instrumentalities of the state may provide housing assistance grants pursuant to [Article 9, Section 14 of the constitution of New Mexico](#) in accordance with rules promulgated by the authority.

E. The authority may provide housing assistance grants pursuant to [Article 9, Section 14 of the constitution of New Mexico](#) in accordance with rules promulgated by the authority.

§6-27-8. Provisions to ensure successful completion of affordable housing projects; sale after foreclosure

A. State, county and municipal housing assistance grants awarded pursuant to the Affordable Housing Act shall be applied for and awarded to qualifying grantees pursuant to the rules promulgated by the authority subject to the requirements of that act.

B. The authority shall adopt rules in accordance with the Administrative Procedures Act to carry out the purposes of the Affordable Housing Act. Concurrence by the New Mexico municipal league is required for rules applicable to municipalities. Concurrence by the New Mexico association of counties is required for rules applicable to counties.

C. The authority shall adopt rules covering:

(1) procedures to ensure that qualifying grantees meet the requirements of the Affordable Housing Act and rules promulgated pursuant to that act both at the time of the award and through the term of the grant;

(2) establishment of an application and award timetable for housing assistance grants to permit the selection of the potential qualifying grantees prior to January of the year in which the grants would be made;

(3) contents of the application, including an independent evaluation of the:

(a) financial and management stability of the applicant;

(b) demonstrated commitment of the applicant to the community;

(c) cost-benefit analysis of the project proposed by the applicant;

(d) benefits to the community of a proposed project;

-
- (e) type or amount of assistance to be provided;
 - (f) scope of the affordable housing project;
 - (g) substantive or matching contribution by the applicant to the proposed project; and
 - (h) performance schedule for the qualifying grantee with performance criteria;
- (4) a requirement for long-term affordability of a state, county or municipal project so that a project cannot be sold shortly after completion and taken out of the affordable housing market;
- (5) a requirement that a grant for a state or local project must impose a contractual obligation on the qualifying grantee that the housing units in a state or local project developed pursuant to the Affordable Housing Act be occupied by low- or moderate-income households;
- (6) provisions for adequate security against the loss of public funds or property in the event that a qualifying grantee defaults on a contractual obligation for the project or abandons or otherwise fails to complete a project;
- (7) a requirement for review and approval of a housing grant project budget by the grantor before any expenditure of grant funds or transfer of granted property;
- (8) a requirement that, unless the period is extended for good cause shown, the authority shall act on an application within forty-five days of the date of receipt of an application that the authority deems to be complete and, if not acted upon, the application shall be deemed approved;
- (9) a requirement that a condition of grant approval be proof of compliance with all applicable state and local laws, rules and ordinances;
- (10) provisions defining “low- and moderate-income” and setting out requirements for verification of income levels;
- (11) a requirement that a county or municipality that makes a housing assistance grant shall have an existing valid affordable housing plan or housing elements contained in its general plan;
- (12) a requirement that the governmental entity enter into a contract with a qualifying grantee consistent with the Affordable Housing Act, which contract shall include remedies and default provisions in the event of the unsatisfactory performance by the qualifying grantee; and

(13) provisions necessary to ensure the timely sale of an affordable housing project on which a qualifying grantee has defaulted on a contractual obligation or abandoned or otherwise failed to complete.

D. The rules adopted by the authority pursuant to Paragraph (13) of Subsection C of this section shall require a governmental entity to:

(1) make a determination that the property is not marketable for a price that would sufficiently recover the public funds invested in the project;

(2) ascertain that the property has a title that has been transferred to the contracting governmental entity through a foreclosure sale, a transfer of title by deed in lieu of foreclosure or any other manner;

(3) exercise reasonable efforts to ensure that all proceeds from the sale of a property pursuant to Paragraph (13) of Subsection C of this section are used solely for purposes pursuant to the Affordable Housing Act and that the qualifying grantee that held title to the property shall not benefit from the sale of the property or from the transfer of the affordable housing project; and

(4) provide the terms for:

(a) the sale of the property at fair market value; and

(b) the removal of the contractual obligation requiring long-term occupancy of the property by low- or moderate-income households.

§6-27-9. Investigation of Affordable Housing Act violations;penalties;remedies

A. The attorney general shall investigate an alleged violation of the Affordable Housing Act reported by the authority. If the attorney general has reasonable belief that a person is in possession, custody or control of an original or copy of a document or recording, including a record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription or other tangible document or recording that the attorney general believes to be relevant to the subject matter of an investigation of a probable violation of the Affordable Housing Act, the attorney general may, prior to the institution of a civil proceeding, execute in writing and cause to be served upon the person a civil investigative demand requiring the person to produce for inspection or copying the document or recording.

B. If the attorney general has reasonable belief that a person has violated a provision of the Affordable Housing Act and that instituting a proceeding against that person would be in the public interest, the attorney general may bring a civil action on behalf of the state alleging a violation of the Affordable Housing Act. The action may be brought in the district court of the county in which the person alleged to have violated that act resides or in which the person's principal place of business is located. The attorney general shall not be required to post bond when seeking a temporary or permanent injunction in the civil action.

C. The attorney general may, in addition to or as an alternative to pursuing a civil action, as provided in this section, pursue criminal charges against a person for an alleged violation of the Affordable Housing Act under the applicable provisions of the Criminal Code.¹ Venue for any criminal action shall be in the judicial district where the violation occurred.

D. In a civil action brought under this section for an alleged violation of the Affordable Housing Act, if a court finds that a person willfully committed an act in violation of the Affordable Housing Act, the attorney general may seek to recover a civil penalty not exceeding the amount of five thousand dollars (\$5,000) per violation, in addition to any equitable relief imposed by the court.

E. As used in this section, “person” means an individual, including a municipal or county government employee or elected official, or a corporate entity, including any organization formed under state law to carry out business or other activities.

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

CLOSING AGREEMENT

This Closing Agreement (“Agreement”) is made by and between the City of Santa Fe (“City”), a municipal corporation, and the New Mexico Inter-Faith Community Housing Development Corporation, a private, not-for-profit organization (referred to as both “NM Inter-Faith” and “Developer”). The parties recite and agree as follows:

RECITALS

- A. On February 26, 2014, the Governing Body passed Resolution No. 2014-13 to initiate the City to work on finding an Artspace and Affordable Housing space on City property.
- B. On March 11, 2015, the Governing Body passed Resolution 2015-24 to initiate the next phase for the Artspace and Affordable Housing space by designating the City of Santa Fe Siler Rd. property as the potential site. The Resolution initiated the creation of criteria for the land donation, asked for the land donation proposal to be brought to the Governing Body, and for the City to conduct the next level of due diligence on the preferred site. This due diligence included the completion of environmental assessments, engineering assessments, a land survey, and an appraisal.
- C. On April 13, 2016, the Governing Body passed Resolution 2016-30 committing to donate the five (5) acre property on Siler Rd. for the project, and to providing development water budget fees, impact fees, construction permit and plan review fees, water and wastewater utility expansion charges, development costs, and to minimize the costs for relocating city uses to another parcel. Additionally, City Staff was direct to bring forward an application to rezone the proposed donated parcel to an appropriate commercial zoning category.
- D. On December 14, 2016, the Governing Body passed Ordinance No. 2016-44 rezoning the five (5) acre parcel known as Tract 2 in the “Plats of Survey for City of Santa Fe, N.M. of the City Yards” recorded in Plat Book 146, Page 5 to C-2 (General Commercial).
- E. On January 31, 2018, the Governing Body passed Resolution No. 2018-9 to commit \$400,000.00 in City resources from a combination of the following sources: City of Santa Fe’s Five-Year CIP project list amended to replace currently approved projects, Tierra Contenta revenue funds, Affordable Housing Trust Fund, CDBG entitlement funds, Economic Development Fund, and the Utility Fund. The funds would be allocated as follows: \$200,000.00 to make improvements to Siler Road and other road infrastructure on-site, and \$200,000.00 of funding to install utility infrastructure.
- F. On January 9, 2019, the Governing Body passed Resolution 2019-6 to support New Mexico Inter-Faith Housing Community Development Corporation’s Affordable Housing Project called the Siler Yard: Arts+Creativity Center with the donation of a five (5) acre parcel off of Siler Rd., donations related to water budget fees, impact fees, construction permit and plan review fees, water and wastewater utility expansion charges, provided the Developer obtaining Low Income Housing Tax Credit in 2019 cycle.

G. On February 11, 2019, the City and NM Inter-Faith enter into a Real Estate Donation Agreement (“Donation Agreement”) recorded in the City Clerk’s records as Item # 19-0088, attached as **Exhibit A**, agreeing that the City would transfer the five (5) acre property (“Tract 2 Property”) described as Tract 2 in the LOT LINE ADJUSTMENT FOR TRACT 1 & TRACT 2 FOR THE CITY OF SANTA FE, filed in the office of the County Clerk of Santa Fe County, New Mexico, on December 9, 2016, in the Santa Fe County Plat Book Number 811, Pages 002-003, attached as **Exhibit B**, to NM Inter-Faith once they received a Low Income Tax Credit for the 2019 Tax Credit round.

H. On June 24, 2019, NM Inter-Faith received - Low Income Tax Credits in the amount of One Million Forty Thousand Dollars and No Cents (\$1,040,000.00) from the New Mexico Mortgage Finance Authority Board of Directors for the Siler Yard: Arts+Creativity Center, attached as **Exhibit C**.

I. The parties are each entering into this agreement pursuant to the Resolutions, Ordinance, and Donation Agreement itemized above.

NOW, THEREFORE, in consideration of the foregoing and the covenants and conditions hereinafter set forth, the parties agree as follows:

AGREEMENT

1. Within 10 business days of the Effective Date of this Settlement Agreement, the City shall transfer Tract 2 Property via a fully executed warranty deed to NM Inter-Faith at the offices of First American Title Insurance Company.

2. The conveyance of the Warranty Deed for Tract 2 Property and the payment of the \$400,000.00 for infrastructure and utilities, on a reimbursable basis, will constitute the complete the full performance of this agreement.

3. The City and NM Inter-Faith, each acknowledge that no other party, nor any agent or attorney of any party, has made any promise, representation, or warranty whatsoever, express or implied, not expressly contained herein, concerning the subject matter hereof so as to induce it to execute this Agreement; and each party acknowledges that this Agreement was not executed in reliance on any promise, representation or warranty not contained herein.

4. NM Inter-Faith agrees that the Tract 2 Property will be used to create the Siler Yard: Arts+Creativity Center, and will be used to house renters with moderate- and low-incomes, with a preference for those who are engaged in the arts, culture, design, entertainment, and media professions and/or other entrepreneurial occupations. The Siler Yard: Arts+Creativity Center will include live/work housing units, and a community resource space that may include: makerspace, studio spaces, shared gallery, performance, educational, creation and conference spaces.

5. The City will provide water and wastewater service to the Tract 2 Property and will furnish water and wastewater to customers located within the property in accordance with City requirements for service and all applicable City ordinances, rules, and regulations. The City agrees to provide Two Hundred Thousand Dollars and No Cents (\$200,000.00), for NM Inter-Faith to use for the installation of water and wastewater infrastructure improvements upon City property and/or legal easements, which abut or are near or on Tract 2 Property, and dedicate and convey those improvements along with said easement and rights-of-way to City for operation and maintenance in accordance with the following:

- a. Construction of water infrastructure shall be completed by a City Water Division approved contractor;
- b. Inspection of the construction of the water and wastewater improvements shall be performed by the City;
- c. Field testing of the construction of the water and wastewater improvements shall be performed by a certified testing laboratory under the supervision of a New Mexico Registered Professional Engineer, in accordance with the current edition of Standard Specifications for Public Works Construction, or if such

specifications are no longer published, with the specifications then being used by the City for public works construction; and

- d. Upon issuance by the City of the Certificate of Completion and Acceptance for the Water and Wastewater Improvements and as consideration for the City's agreement to own, operate, and maintain the water and wastewater improvements, Developer shall dedicate, assign, convey, and deliver the water and wastewater improvements to the City and warrant and represent that the water and wastewater improvements are transferred and conveyed free and clear of all liens, encumbrances, rights and claims of third parties. Developer shall also convey all necessary easements and rights-of-way as well as the rights of ingress and egress and the right of excavation as required for maintenance, repair, or replacement for any of the water and wastewater improvements installed. All easements shall be of public record and clearly shown on plats prior to final recording in the City's water and wastewater records.

6. NM Inter-Faith will apply to the Office of Affordable Housing to obtain housing funds and/or other community development funds in the amount of Two Hundred Thousand Dollars and No Cents (\$200,000.00) to make improvements to Siler Road and other road infrastructure as required for the anticipated development.

7. NM Inter-Faith agrees that the Siler Yard: Arts+Creativity Center will serve households earning between 30-60% of the median income with at least 50 65 affordable live/work rentals. The project will have dedicated outdoor amenities, green space, and shared facilities for the residents.

8. NM Inter-Faith agrees that the Siler Yard: Arts+Creativity Center will be designed to be consistent with the City's long term sustainability goals.

9. The donation of Tract 2 Property is subject the terms of the land use regulatory agreement (LURA), which requires an affordability period of forty-five (45) years, imposed by the New Mexico Mortgage Finance Authority.

10. The City of Santa Fe shall complete all site clearance and relocation activities by February 29th, 2020.

11. New Mexico Inter-Faith agrees to allow the City of Santa Fe access to the site for the purpose of ongoing City government activities and clearance of the site for the purposes of site clearance and city asset relocation with the understanding that NM Inter-Faith assumes no liability over the site's conditions during the City's clearance and relocation activities. Any liability of the City is subject to privileges and immunities of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-1-1 through 41-1-30.

12. The City of Santa Fe is expressly prohibited from disturbance of any and all subsurface soils unless expressly authorized by New Mexico Inter-Faith Housing.

13. The City warrants and represents that it has the full authority to enter into this agreement and that the consent or agreement of no other party is required in order for this Agreement to be effective or to be binding on the parties hereto.

14. The parties agree to cooperate in good faith to carry out the terms of this Agreement promptly and expeditiously.

15. The parties agree that this Agreement shall be governed by the laws of the State of New Mexico.

16. Upon breach of this agreement by either party, the non-defaulting party may bring an action for specific performance in the First Judicial District Court, County of Santa Fe. The Prevailing party in any action to enforce this agreement shall be entitled to reasonable attorney's fees and costs, as determined by the Court.

17. This Agreement may be executed by the parties in counterparts, each of which is an original by all of which together shall construe one and the same document. A facsimile or email of this Agreement, with electronically reproduced signatures, shall be legally effective and binding until such time as replaced the Agreement containing original signatures, which shall be provided within a reasonable time.

18. The term "Effective Date of this Agreement" shall mean the date on which this Agreement is executed by the last of the parties hereto.

19. The parties mutually agree to cooperate in the execution and delivery of such additional documents as may be reasonably necessary to carry out the terms of this Agreement.

20. Each of the recitals set forth above are hereby incorporated into this Agreement as through fully set forth herein.

[Remainder of page intentionally left blank]

REAL ESTATE DONATION AGREEMENT

THIS REAL ESTATE DONATION AGREEMENT ("Agreement") dated this 11th day of February, 2019, by and between the City of Santa Fe, (or "Donor") and the New Mexico Inter-Faith Community Housing Development Corporation, a private, not-for-profit organization (or "Donee").

WHEREAS, Donor is the owner of approximately 5 acres of land located on Siler Road which is highly valued for its zoning, readiness for construction including proximity to utilities, flat topography, proximity to public transportation, and to nearby services and retail facilities values;

WHEREAS, the Donor owns the property with no encumbrances on title;

WHEREAS, the City of Santa Fe acknowledges the Donee as a "Qualified Grantee" for purposes of local affordable housing ordinances and compliance with the New Mexico Affordable Housing Act;

WHEREAS, the donation of this parcel was preceded by two City of Santa Fe Resolutions, 2014-13 and 2015-24, that supported the identification of the parcel for affordable housing development and site due diligence; one City of Santa Fe Ordinance, 2016-44 which amended the City's official zoning map, changing the zoning classification from I-2 (General Industrial) to C-2 (General Commercial); one City of Santa Fe Resolution 2016-30 which expressed the City's intent to donate the property for the 2016 and 2017 Low Income Housing Tax Credit (LIHTC) application rounds; and one City of Santa Fe Resolution, 2018-09 which committed additional cash resources not to exceed \$400,000 to support the development of the project;

WHEREAS, the donation of the parcel to the Donee was re-committed and formalized by vote of the Santa Fe City Council on City of Santa Fe Resolution 2019-06;

WHEREAS, this is an "arms length" transaction and no identity of interest exists between the Donor and the Donee, their staff, Board of Directors, or Elected Officials.

WHEREAS, Donee acknowledges that the City of Santa Fe has no obligations or responsibilities with regard to development of the 5 acre property other than the transfer of the property for those purposes and as warranted in the deed.

It is agreed as follows:

1. Agreement to Convey.

Provided the Donee is successful in securing an allocation of Low Income Housing Tax Credits in the 2019 Tax Credit round and the conditions put forth in City of Santa Fe Resolution 2019-06 have been met, Donor hereby agrees to convey to Donee and Donee hereby agrees to accept the donation from Donor, of all that certain parcel of land lying and being situated in the CITY OF SANTA FE containing approximately 5 (five) acres and being more particularly described as a certain parcel of land, being designated as Tract 2, lying and being situate within Projected Section 33, Township 17 North, Range 9 East, City and County of Santa Fe, New Mexico and being more

particularly described as follows:

Commencing at the northeast corner of the parcel hereon described, from which U.S.C. and G.S.Brass Cap "AZIMUTH" 1945 Santa Fe East Base bears, North 41°47'15" West, a distance of 107.65';

Thence from said point of beginning South 37°20'50" East, a distance of 99.85';

Thence South 36°51'55" East, a distance of 327.53';

Thence South 53°13'27" West, a distance of 249.41';

Thence South 60°10'52" West, a distance of 227.79';

Thence North 26°09'19" West, a distance of 546.20';

Thence North 63°53'34" East, a distance of 57.00';

Thence North 65°19'22" East, a distance of 72.16';

Thence North 70°33'29" East, a distance of 96.63';

Thence North 81°20'45" East, a distance of 175.22' to the Point of Beginning.

Containing 5.000 acres, more or less.

- a. All the rights and appurtenances pertaining thereto, including any right, title, and interest of Donor in and to adjacent streets, roads, alleys, and rights-of way (for potential installation of underground utilities in accordance with easement provisions)
- b. Such other rights, interests, and properties as may be specified in this Agreement to be conveyed, transferred, assigned or conveyed by Donor to Donee.
- c. A condition precedent to the closing of the transfer of the Property subject to this Agreement is approval and execution by Attachment A, Deed of Trust.

2. Donor's Ownership

Donor warrants and represents that it is the sole fee simple owner of the Property and has all necessary authority to sell the Property there are no other contracts for sale or options involving the Property no other party has any right, title, or interest in the Property and there are no leases affecting or relating to the Property. Between the date Donor executes this Agreement and Settlement, Donor shall not subject the Property to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, rights of way, or agreements, or take any other action affecting or modifying the status of title or otherwise affecting the Property without the written consent of the Donee.

3. Actions or Suits

Unless set forth by Donor in an attachment to this Agreement, Donor warrants and represents that there are no actions or suits in law or equity or proceedings by any governmental agency now pending or, to the knowledge of the Donor, threatened against Donor in connection with the Property, and there is no outstanding order, writ, injunction, or decree of any court or governmental agency affecting the Property.

4. Proffers and Commitments.

Donor represents there has not been made and will not be made, without Donee's consent, any proffers or other commitments relating to the Property, which would impose any obligation on Donee or its successors and assigns, after Settlement, to make any contribution of money or dedications of land or to construct, install, or maintain any improvements of a public or private nature on or off the Property.

5. Other Agreements.

Donor warrants and represents that the execution and delivery of this Agreement, the completion of the transaction(s) contemplated hereby, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Donor is a party or by which it or the Property is bound, or any judgment, decree, order, or award of any court, governmental body, or arbitrator, or any law, rule, or regulation applicable to Donor.

6. Settlement.

a. Settlement and delivery of possession shall be within forty-five (45) business days of the approval of award of Low Income Housing Tax Credits by the Board of Directors of the New Mexico Mortgage Finance Authority, allowing a reasonable time for preparation of documents ("Settlement"). Settlement shall be held at the offices of First American Title Insurance Company, as the "Settlement Agent," or at such other place as the parties may agree. Donor shall deliver to Donee, at Settlement, a fully executed warranty deed conveying the Property in fee simple to Donee, ("Deed").

b. Donor shall deliver to Donee at Settlement an affidavit, on a form acceptable to Donee or Donee's title insurance company, signed by Donor, that no labor or materials have been furnished to the Property within the statutory period for the filing of mechanics' or materialmen's liens against the Property, or if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full.

c. Donor agrees to deliver to Donee or Settlement Agent the following at or prior to Settlement:

- (i) The fully executed Deed;
- (ii) The signed closing or settlement statement prepared or approved by Settlement Agent; and
- (iii) Any other documents reasonably required by Settlement Agent or Donee.

7. Title.

The Property shall be conveyed free from all mortgages, deeds of trust, liens, security interests, and other financial encumbrances.

8. Expenses of Settlement.

a. Donee shall pay for its own attorney's fees as well as other charges customarily paid by a Donee of real estate in Mexico.

b. Donee shall pay for the preparation of the Deed, any other documents it is required to provide hereunder, and its own attorney's fees as well as other charges customarily paid by a Donor of real estate in NEW MEXICO.

c. All real estate taxes, assessments, utility charges, and rent, if any, shall be prorated as of Settlement.

9. Default.

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or inequity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default.

10. Prior Agreements Merger.

This Agreement supersedes any and all prior understandings and agreements between the parties and constitutes the entire agreement between them. No representations, warranties, conditions, or statements, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended, altered, or modified except by an instrument in writing signed by the party sought to be charged therewith.

12. Miscellaneous.

Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors, and permitted assigns. No assignment of this Agreement shall be permitted except with the written consent of the other party, which consent shall not be withheld unreasonably. The warranties, representations, and terms of this Agreement shall survive delivery of the Deed and shall not be merged therein.

13. Notices.

Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid, or if delivered in hand, as follows:

If delivered or mailed to
Donee:

New Mexico Inter-Faith Housing
125 E. Palace Ave, Suite 43, Santa Fe NM 87501
ATTN: Chief Operating Officer

If to Donor:

City of Santa Fe
PO Box 909
Santa Fe, NM 87504-0909
ATTN: City Attorney's Office

14. Governing Law.

Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the STATE OF NEW MEXICO.

15. Execution and Delivery of Agreement.

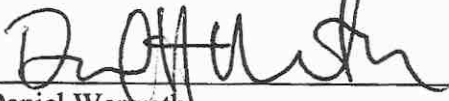
a. The date upon which this Agreement shall be finally executed by the authorized representative of Donee and Donor shall be the effective date ("Effective Date") hereof.

16. Term of Agreement.


This agreement shall remain in effect without condition from Effective Date until the **30th day of June, 2020.**

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

DONEE: **New Mexico Inter-Faith Housing**

By: 
Name: Daniel Werwath
Title: Chief Operating Officer
Date: 2/11/19

CITY OF SANTA FE

By: 
Name: Erik J. Jitzenberg
Title: City Manager
Date: 2/7/19

ATTEST:


Yolanda Y. Vigil, City Clerk
aw

Approved as to form:

 For
Erin McSherry, City Attorney

Approved:


Mary McCoy, Finance Director

(Insert forms of acknowledgement for signatures)

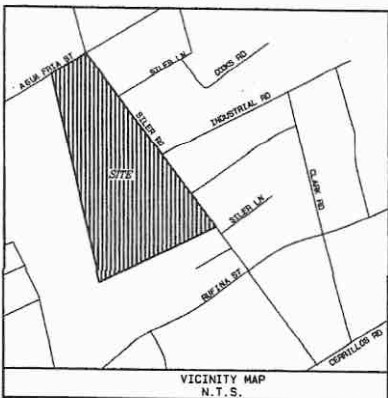
LOT LINE ADJUSTMENT OF TRACT 1 & TRACT 2 FOR THE CITY OF SANTA FE

LYING AND BEING SITUATED WITHIN
SECTION 33, T. 37 N., R. 09 E., N.M.P.M.,
CITY OF SANTA FE, NEW MEXICO

811002



Graphic Scale 1" = 100'
0 100 200 300 400



LEGEND:

- ◆ CITY OF SANTA FE CONTROL MONUMENT
- FOUND MONUMENT AS NOTED
- SET 1/2" REBAR, STAMPED
N.M.P.L.S. No. 6598

OWNER'S CONSENT

THE UNDERSIGNED OWNER(S) DO HEREBY ATTEST THAT THE GRANT OF EASEMENTS, SPECIFICALLY THE 20' SANITARY SEWER EASEMENT & THE 12' WIDE ACEQUIA EASEMENT, LOT LINE ADJUSTMENT AND PLATTING AS SHOWN HEREON IS MADE WITH THEIR FREE CONSENT AND IS IN ACCORDANCE WITH THEIR WISHES AND DESIRES. THESE LANDS LIE WITHIN THE PLATTING AND PLANNING JURISDICTION OF THE CITY OF SANTA FE, NEW MEXICO.

[Signature] 12-9-16
SANTA FE COUNTY TREASURER DATE

[Signature]
CITY OF SANTA FE
BRIAN K. SNYDER, CITY MANAGER
ATTEST:

[Signature]
YOLANDA Y. VIGIL, CITY CLERK

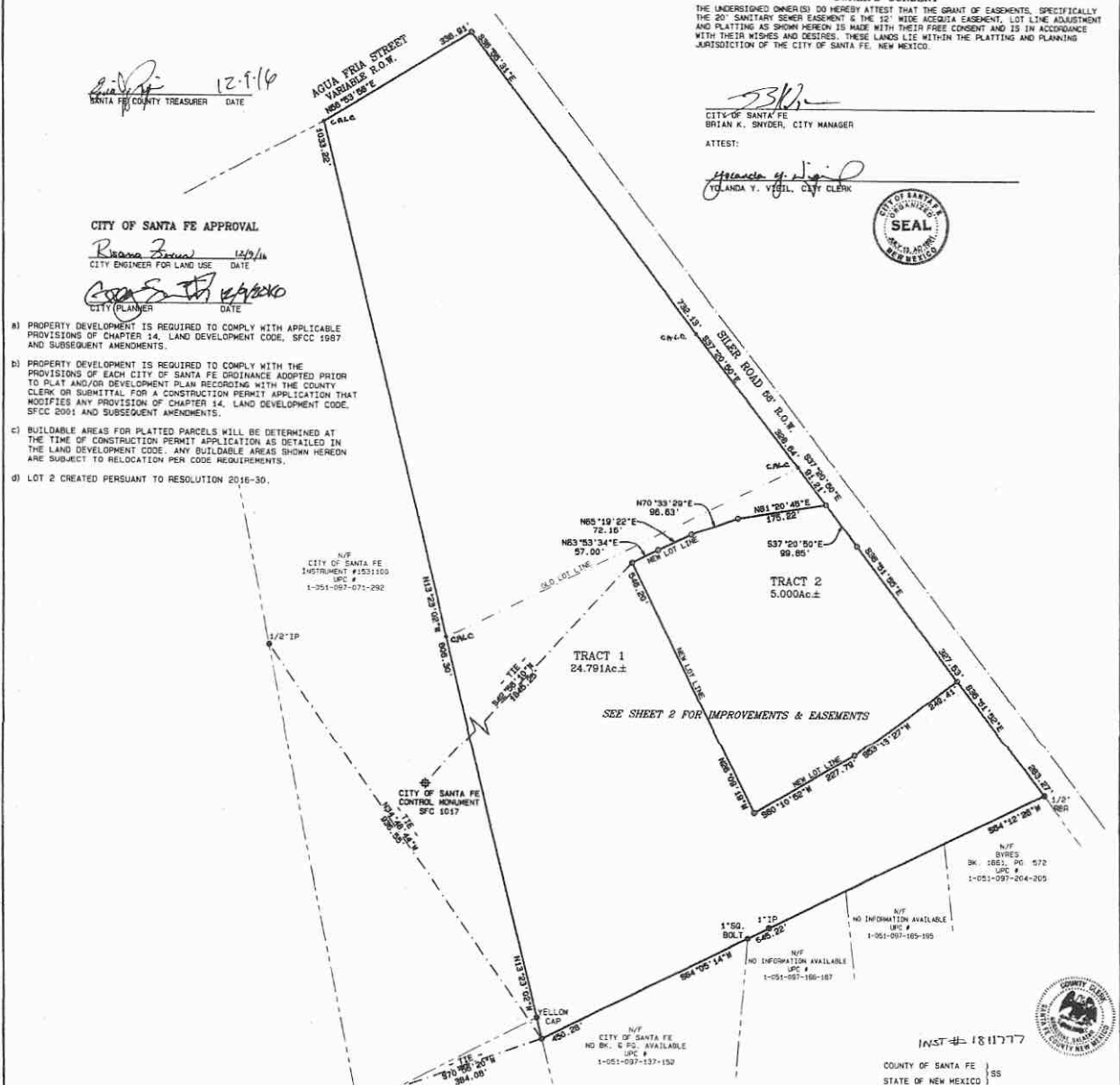


CITY OF SANTA FE APPROVAL

[Signature] 12/9/16
CITY ENGINEER FOR LAND USE DATE

[Signature]
CITY PLANNER DATE

- a) PROPERTY DEVELOPMENT IS REQUIRED TO COMPLY WITH APPLICABLE PROVISIONS OF CHAPTER 14, LAND DEVELOPMENT CODE, SFCO 1987 AND SUBSEQUENT AMENDMENTS.
- b) PROPERTY DEVELOPMENT IS REQUIRED TO COMPLY WITH THE PROVISIONS OF EACH CITY OF SANTA FE ORDINANCE ADOPTED PRIOR TO PLAT AND/OR DEVELOPMENT PLAN RECORDING WITH THE COUNTY CLERK OR SUBMITTAL FOR A CONSTRUCTION PERMIT APPLICATION THAT MODIFIES ANY PROVISION OF CHAPTER 14, LAND DEVELOPMENT CODE, SFCO 2001 AND SUBSEQUENT AMENDMENTS.
- c) BUILDABLE AREAS FOR PLATTED PARCELS WILL BE DETERMINED AT THE TIME OF CONSTRUCTION PERMIT APPLICATION AS DETAILED IN THE LAND DEVELOPMENT CODE. ANY BUILDABLE AREAS SHOWN HEREON ARE SUBJECT TO RELOCATION PER CODE REQUIREMENTS.
- d) LOT 2 CREATED PURSUANT TO RESOLUTION 2016-30.



- NOTES:**
1. BASIS OF BEARING IS PLAT ENTITLED "PLATS OF SURVEY FOR CITY OF SANTA FE, NH OF THE CITY YARDS", PREPARED BY RICHARD E. SMITH, N.M.P.S. No. 8837, RECORDED IN BOOK 145, PAGE 5-8 ON OCTOBER 16, 1984 AT THE SANTA FE COUNTY CLERK'S OFFICE.
 2. REFER TO DISTRICT COURT CASE NO. 17717 FOR CONDEMNATION OF LAND, FINAL JUDGMENT DATED FEBRUARY 5, 1941.
 3. REFER TO EASEMENT FRONT #12398, RECORDED AS INSTRUMENT #1445815 ON AUGUST 16, 2006 AT THE SANTA FE COUNTY CLERK'S OFFICE.
 4. THESE LANDS LIE WITHIN ZONE "X" AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS PER F-1-R.M. COMMUNITY PANEL NO. 35649004056 DATED DECEMBER 4, 2012.
 5. REFER TO PLAT ENTITLED "BOUNDARY SURVEY PLAT FOR CITY OF SANTA FE", PREPARED BY DAVID E. COOPER, N.M.P.S. No. 9026, RECORDED IN BOOK 685, PAGE 39 ON JULY 1, 2008 AT THE SANTA FE COUNTY CLERK'S OFFICE.

SURVEYOR'S CERTIFICATE

I MITCHEL K. HOONAN, N.M.P.L.S. No. 8998 DO HEREBY CERTIFY THAT THIS BOUNDARY SURVEY PLAT AND THE ACTUAL SURVEY ON THE GROUND UPON WHICH IT IS BASED WERE PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THIS SURVEY MEETS THE MINIMUM STANDARDS FOR SURVEYS IN NEW MEXICO; AND THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

[Signature] 12/09/16
MITCHEL K. HOONAN N.M.P.L.S. No. 8998



INDEXING INFORMATION FOR COUNTY CLERK

UPC # 1-051-097-110-310 (TRACT 1)
1-051-097-151-220 (TRACT 2)

OWNER: CITY OF SANTA FE

FILED: DISTRICT COURT CASE NO. 17717

SURVEYOR: _____

SECTION: SECTION 33, T. 37 N., R. 09 E., N.M.P.M.

SHEET 1 OF 2

SOUTHWEST MOUNTAIN SURVEYS

1114 HICKOX ST., SANTA FE, N.M. 87501
PH: 505-833-5428 FAX: 505-833-5413

DATE: 02/12/16 DRAWN BY: _____ PROJECT NO.: T-2634

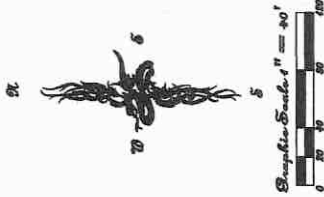
CASE #0516-110 ANTI-CREATIVITY CENTER LOT LINE ADJUSTMENT

Exhibit B

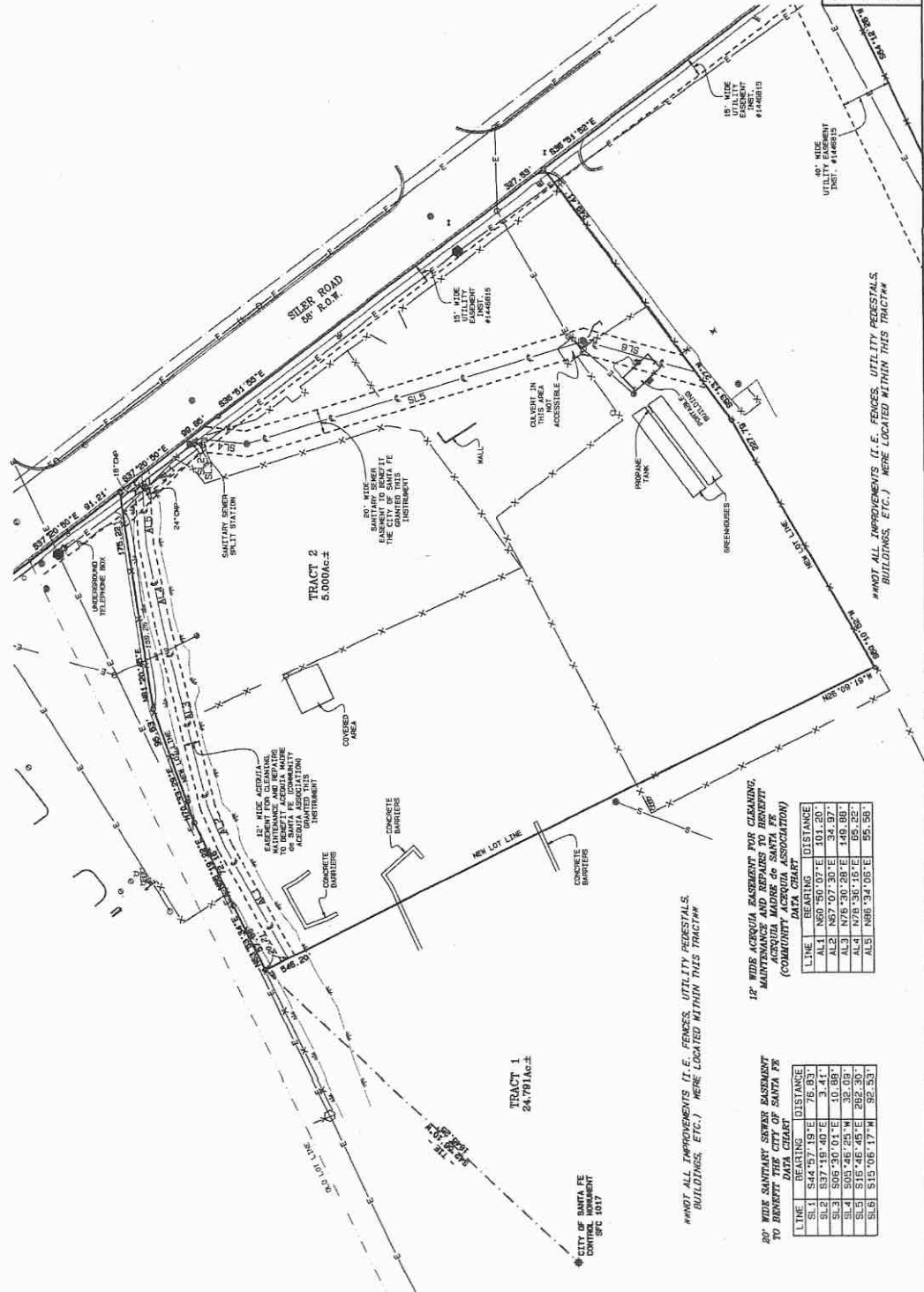
LOT LINE ADJUSTMENT OF TRACT 1 & TRACT 2 FOR THE CITY OF SANTA FE

811003

LYANS AND BEING SITUATED WITHIN
SECTION 33, T. 17 N., R. 09 E., N.M.P.M.,
CITY OF SANTA FE, NEW MEXICO



- LEGEND:**
- ⊕ CITY OF SANTA FE CONTROL MONUMENT
 - FOUND MONUMENT AS INDICATED
 - 1/2" REBAR STAMPED
 - ⊙ SANITARY SEWER MANHOLE
 - ⊙ GAS REGULATOR
 - ⊙ GAS METER
 - ⊙ SPIGOT
 - ⊙ STORM SEWER MANHOLE
 - ⊙ UTILITY POLE W/ ELECTRIC METER
 - CLEANOUT
 - UTILITY POLE
 - ⊙ MANHOLE
 - ⊙ WATER VALVE
 - ⊙ TELEPHONE MANHOLE
 - ⊙ LANDSCAPE LIGHT POLE
 - ⊙ TELEPHONE JUNCTION BOX
 - ⊙ HAZE UTILITY POLE
 - ⊙ UNDERGROUND UTILITY BOX
 - OVERHEAD ELECTRICAL LINE
 - TOP EDGE OF BANK
 - CHAINLINK FENCE
 - POLE BOLLARD



12' WIDE ACQUIA EASEMENT FOR CLEANING, MAINTENANCE AND REPAIRS TO BARRIERS TO BENAVIT, THE CITY OF SANTA FE (COMMUNITY ACQUIA ASSOCIATION)

90' WIDE SANITARY SEWER EASEMENT TO BENAVIT, THE CITY OF SANTA FE

DATA CHART

LINE	BEARING	DISTANCE
SL-1	S44°57'19"E	76.93'
SL-2	S37°15'40"E	3.41'
SL-3	S03°46'24"W	32.00'
SL-4	N78°36'15"E	85.25'
SL-5	S15°46'45"E	292.30'
SL-6	S15°06'17"W	92.53'

DATA CHART

LINE	BEARING	DISTANCE
AL-1	N60°30'07"E	101.20'
AL-2	N67°07'30"E	34.97'
AL-3	N78°30'28"E	148.00'
AL-4	N78°36'15"E	85.25'
AL-5	N68°34'05"E	95.50'

NOT ALL IMPROVEMENTS (I.E. FENCES, UTILITY PEDESTALS, BUILDINGS, ETC.) WERE LOCATED WITHIN THIS TRACT#

SHEET 2 OF 2

SOUTHWEST MOUNTAIN SURVEYS

INDEXING INFORMATION FOR COUNTY CLERK
 LPP #
 L-201-207-110-210 TRACT 1
 L-201-207-110-210 TRACT 2
 OWNER: CITY OF SANTA FE
 FILER: DISTRICT COURT CASE NO. 1717
 COUNTY: SANTA FE
 SECTION: SECTION 33, T. 17 N., R. 09 E., N.M.P.M.
 SUBDIVISION: LYANS AND BEING SITUATED WITHIN SECTION 33, T. 17 N., R. 09 E., N.M.P.M.
 PROJECT: 07-252-18
 DRAWING: 1-2624



June 24, 2019

Mr. Daniel Werwath
New Mexico Inter-Faith Community Housing Development Corporation
125 E. Palace Ave, Suite 43
Santa Fe, NM 87503

**Via Certified US Mail and email: dwerwath@nmi-f.org*

RE: Siler Yard: Arts & Creativity Center, Santa Fe, NM - Project TC 191000

Dear Mr. Werwath:

I am pleased to advise that the New Mexico Mortgage Finance Authority Board of Directors has approved a Reservation of Tax Credits for Siler Yard: Arts & Creativity Center, a new construction project to be located in Santa Fe, NM (the "Project"). The total amount approved is \$1,040,000.

As stated in Section IV.B. of the 2019 New Mexico Qualified Allocation Plan (the "2019 QAP"), a nonrefundable Processing Fee of seven and one-half percent (7.5%) of the annual Tax Credit amount shown above is due at the time of the execution of the Reservation Contract (enclosed). The amount due for this Project is **\$78,000**; the executed contract and payment must be returned by **5:00 PM MDT on July 8, 2019** or the **Reservation of Tax Credits will be forfeited**. The Reservation becomes effective on the date that MFA executes the contract, after payment is received. A copy of the executed contract will be returned to you within seven (7) business days after it has been executed by MFA.

A copy of the MFA architect's notes from preliminary plan and specifications review are attached for your information. You do not need to respond to the notes at this time. You should note, however, that the final Project plans and specifications must demonstrate compliance with MFA's 2019 *Mandatory Design Standards for Multifamily Rental Housing*.

Please be aware that a Reservation of Tax Credits is not a guarantee of the availability of Tax Credits for this Project. All Projects receiving a Reservation of Tax Credits are subject to the limitations, conditions, and obligations set forth in the 2019 QAP and the Reservation Contract. All Projects must fulfill the requirements for a Carryover Allocation no later than November 15, 2019, without exception. If you feel that your Project will not be able to meet the requirements as stated in the Reservation Contract and Section IV.G. of the 2019 QAP, please notify us immediately so that another Project may be chosen.

Exhibit C

If you have any questions, you may contact me at kturner@housingnm.org (505) 767-2283.

Sincerely,

A handwritten signature in black ink, appearing to be 'K. Turner', written over a horizontal line.

Kathryn Turner
Tax Credit Program Manager

Enclosure

City of Santa Fe, New Mexico

memo

Date: October 17, 2019

To: City Council – October 30, 2019

From: Alexandra Ladd, Director, Office of Affordable Housing *ALL*

Re: Approval of a Closing Agreement and Warranty Deed between the City of Santa Fe and New Mexico Inter-Faith Community Housing Development Corporation to convey Tract 2 in the Lot Line Adjustment for Tract 1 & Tract 2 for the City of Santa Fe pursuant to Resolutions 2014-13, 2015-24, 2016-30, 2018-9, 2019-6, and Ordinance 2016-44.

Attached: Closing Agreement with Exhibits A, B, and C, and Warranty Deed with Exhibit 1

ACTION REQUESTED

Authorization for the Mayor to execute the attached Closing Agreement and Warranty Deed to donate a portion of the City-owned public works yard, located on Siler Road, known as Tract 2 in the Lot Line Adjustment for Tract 1 & Tract 2 for the Siler Yard: Arts+Creativity Center project and \$400,000.00 for improvements on Siler Road and to install utility infrastructure. This donation will bring to fruition the construction of 65 affordable rental live/work housing units in addition to a shared-resource, community arts center pursuant to Resolutions 2014-13, 2015-24, 2016-30, 2018-9, 2019-6, and Ordinance 2016-44.

BACKGROUND

The Governing Body has passed Resolutions 2014-13, 2015-24, 2016-30, 2018-9, 2019-6, and Ordinance 2016-44, over the past five years to move the Siler Yard: Arts+Creativity Center project forward. NM Inter-Faith Housing has worked with Creative Santa Fe to plan and design the Siler Yard: Arts+Creativity Center, a facility that will offer 65 affordable live/work rental housing to households that earn no more than 60% of the area median income. The space will also include share resource space and retail space for creative businesses. In addition, the project accomplishes other City planning and economic development goals related to corridor redevelopment such as, infill, green building, mixed-use development, small business/entrepreneurial support, and promotion of the arts and arts-related activities.

ITEM AND ISSUE

The City's resolutions were approved by the Governing Body agreeing to the Siler Property as the

location for this donation, contingent on the project securing a tax credit subsidy, in addition to other housing funds and private support. On June 24, 2019, NM Inter-Faith Housing Corp received a LIHTC award in the amount of \$1,040,000 to finance construction of the project. Compliance with affordability restrictions are monitored by the NM Mortgage Finance Authority and adherence to the land use restriction to maintain affordability is ensured for a minimum period of 45 years. Additionally, the rigor of the LIHTC underwriting ensures that the project's operating pro-forma is financeable so that there is much less speculative risk of the project foreclosing before the end of its mandated compliance period.

The closing agreement and warranty deed attached for the Governing Body's approval is required by the tax credit underwriters for the closing of the subsidy funds. The closing agreement memorializes the City's support of the project and specifies the terms of the donation. Through this agreement, the City pledges additional financing in the amount of \$400,000, as described above.

REQUEST FOR QUALIFICATIONS

AFFORDABLE HOUSING SITE DEVELOPMENT

Location: 635 Alto Street, Santa Fe, New Mexico

Issued by:

**The City of Santa Fe's
Asset Development Office
AND
Office of Affordable Housing**



RFQ: 635 Alto LPDU

RELEASE DATE: September 15, 2021

SUBMISSION DUE DATE: October 13, 2021

I. INTRODUCTION

The City of Santa Fe (“City”) is seeking qualifications for real estate developers, affordable housing builders and providers and other qualified parties as provided for in Paragraph VI below (“Respondent(s)” or “Respondent Team(s),” collectively “Respondents”) with the capacity and qualifications to build affordable housing in the city of Santa Fe.

The disposition of this site, the subject of this Request for Qualifications (“RFQ”), is intended to be the first of a series of dispositions of under-used City-owned property for the purposes of stimulating the creation of housing units on infill lots. Recognizing that land acquisition and other forms of site control are significant hurdles in the development process, and that developing affordable units is financially challenging, this RFQ provides an opportunity for non- and for-profit developers and builders to attain a developable lot through a real estate donation/disposition agreement.

II. PURPOSE OF THIS REQUEST FOR QUALIFICATIONS

The City is issuing this RFQ to receive submissions (“Submission(s)”) from Respondents for consideration in developing five (5) housing units to be designated as Low Priced Dwelling Units (“LPDU”) subject to the provisions, and as defined by, Santa Fe City Code (“SFCC”) 26-2. The link to SFCC 26-2 is:

https://library.municode.com/nm/santa_fe/codes/code_of_ordinances?nodeId=CHXXVIHO_26-2LOPRDWUN

III. PROJECT SITE

The address of the site is 635 Alto Street in Santa Fe, New Mexico (“Site”). The Site is further described as Lot 9A; Parcel 122 of Document #438267; UPC#: 1053099447224; Deed: Book 430 & Page 688 and it is located in Santa Fe’s Westside Guadalupe Historic District. It is one-quarter (1/4) acre in size (10,910 square feet) and the dimensions are: 112.62 x 119.93 x 82.42 x 109.63. A Map of the site can be found [HERE \(1\)](#). Land use requirements that apply to this site can be found [HERE. \(2\)](#)

IV. NEW MEXICO AFFORDABLE HOUSING ACT

The donation of this Site must be in conformance with the New Mexico Affordable Housing Act (the “Act”) which provides an exemption to the State of New Mexico’s Anti-Donation Clause. The Act determines eligible uses for donations of public land, cash, buildings or infrastructure. All beneficiaries of the donated value must be income-qualified as earning no more than 120% of the area median income (“AMI”), determined through a Department of Housing and Urban

Development (HUD) approved income certification process. Income limits for 2021 can be found [HERE \(3\)](#).

V. BACKGROUND INFORMATION

This Site was the subject of the Greenworks Design Competition sponsored by the City in 2008-09. The competition called for designs that reflected quality and innovation, achieved green building standards, met all land use requirements, conformed to the City's inclusionary zoning program, provided a reasonable budget, and could serve as a replicable model for infill and green buildings. The competition also called for proposed projects that demonstrated responsiveness to neighborhood context, historic design overlay standards and public input. Materials related to the design competition can be viewed [HERE \(4\)](#).

One of the winning designs from 2009 proposed five (5) units constructed on the site, of varying affordability from deeply subsidized to market rate. Later, the City approved Resolution 2010-57 which called for completing predevelopment due diligence, making design changes as needed and drafting construction drawings. The winning architect was hired as the City's agent and the design was submitted to and approved by the Santa Fe Historic Districts Review Board in 2011. While this design approval is expired, it serves as a "proof of concept" and the City encourages respondents to this RFQ to replicate aspects of the design approach as functionally appropriate. The design can be reviewed [HERE \(5\)](#).

VI. ELIGIBILITY

Eligible Respondents to this solicitation include developers, contractors and sponsors of affordable housing, including, and not limited to, partnerships, corporations, limited liability companies, joint ventures, public/private partnerships and non-profit organizations that are organized under state, local, or tribal laws. Respondents must have proven financial capacity and organizational experience to carry out the desired project described in the Submission. Additionally, the MFA Affordable Housing Act Rules require the City of Santa Fe certifies that the respondent is a "Qualifying Grantee" prior to approving the disposition, as described in city code

https://library.municode.com/nm/santa_fe/codes/code_of_ordinances?nodeId=CHXXVIHO_26-3AFHOTRFU

VII. LETTER OF INTEREST

A non-binding letter of interest may be emailed to Alexandra Ladd, Director, Office of Affordable Housing at agladd@santafenm.gov. This will ensure that all prospective respondents receive notice of changes to this RFQ process. The letter of interest is a simple

note indicating that you intend to respond to the RFQ, your organizational affiliation, and your contact information.

VIII. EVALUATION FACTORS

Submissions are required to respond to the following evaluation factors to determine whether the City's objectives for the RFQ are met:

- A. Development Program.** Provide a narrative description of the proposed project, including total development square footage, number of units, unit types, number of bedrooms, household income targets, housing tenure, supportive services/amenities connected to the built project, sustainability and green building features, and highlight any innovation that makes this approach unique. This may also include any co-ownership, community land trust or other non-traditional funding sources or models of operations.

- B. Concept Design.** Provide 1) a site plan that illustrates set-backs, sustainable site aspects, landscape design and materials, outdoor amenities, parking, set-backs, automobile and pedestrian circulation, other environmental or design features; 2) building design that illustrates massing and solar orientation, construction type, materials, green building elements, design elements, strategies that may enable future adaptation and/or densification of the site, expected utility use, and other environmental or design features; 3) a design narrative that describes how proposed project will satisfy design requirements of the Santa Fe Residential Green Building code, historic design requirements, and architectural design requirements.

- C. Experience/Financial Ability.** Provide 1) organizational chart and resumes of the development team, including name and role, identifies project manager and who is empowered to make decisions for the team; 2) project details for similar projects to illustrate experience and expertise, including project name and address, project team (architects, contractors, lenders and investors), project description/development program (total development cost, square footage per residential, retail, office, unit mix, tenure, household income targets, development timeframe) and plans, elevations and images of past projects; 3) business and financial references (at least three references from similar projects completed or in the pipeline within the last 5 years); 4) evidence of financial stability and access to equity (illustrating capacity to leverage funding from a variety of sources – public, private and philanthropic).

D. Project Feasibility. Provide 1) sources and uses budget that includes projected hard (construction) and soft (professional, financing, other) costs, sources of gap financing from private debt, other public financing, and impact investing funds; 2) project operating budget (income and expenses) and identification of subsidy sources over a ten year period for rental projects and/or until 100% absorption of sales for homeownership; 3) letters of interest from financial lenders or investors; 4) schedule that shows benchmarks for completion of proposed project. Project feasibility may also be supported through non-traditional sources such as community land trusts or co-ownership models.

IX. EVALUATION FACTOR SCORING

The following is a summary of Evaluation Factors with point values assigned to each. The weighted factors will be used in the evaluation of each Submission.

A: Development Program	30
Unit Mixture & Affordability Achievements	
Other Amenities & Support Provided (if applicable)	
B: Concept & Design	25
Site Plan & Building Design	
Required Design & Zoning Conformance	
Satisfaction of Desired Design Elements	
C: Experience & Financial Ability	25
Project Team & Resumes	
Demonstrated Past Projects	
Business References	
Financial Stability	
D: Demonstrated Project Feasibility	20
Financial Feasibility	
Project Schedule	
Total	100 POINTS

X. SUBMISSION FORMAT

- 1. Cover Letter.** In addition to the response specifications described below, all Respondents should include a cover letter signed by the person who is empowered by the organization’s governing body to conduct real estate negotiations stating that the information provided is true and correct to the best of the Respondent’s information,

knowledge, and behalf. The letter must provide the contact name and information for the person responsible for the response.

2. All Submissions must be submitted in an electronic format, organized in the order described in Section IX of this RFQ. Each Evaluation Criteria shall be numbered and clearly titled.
3. All Submissions shall be limited to fifteen (15) pages, with the exception of professional licenses, certifications and references, which shall be added as appendices.
4. The Submission should be standard 8 ½" x 11" with a font no smaller than 12 pt. pitch with standard 1" margins.

XI. Award

Award is defined as a signed Real Estate Donation Agreement ("Contract"). The Contract shall be awarded to the Respondent whose submittal is most advantageous to the City, taking into consideration the evaluation factors set forth in this RFQ. In the event that mutually agreeable terms cannot be reached with the selected Respondent, the City reserves the right to enter into negotiations for an Award with the next ranked Respondent(s) without undertaking a new RFQ process.

This RFQ shall be governed by the laws of the State of New Mexico.

XII. RESOURCES AND RESPONSE TIMELINE

1. RFQ Contact:

Alexandra Ladd
Office of Affordable Housing
agladd@santafenm.gov

- 2. Information Session.** All interested applicants may attend an optional pre-deadline orientation session via Zoom meeting. This meeting is to ensure understanding of the RFQ process and requirements for submittal. The virtual meeting will take place on **September 21, 2021** from **11am to noon pm**. Spanish interpretation provided upon request. Email agladd@santafenm.gov for Zoom meeting information. An archived recording of this information session will be made available on the City's YouTube channel for those not able to attend the live meeting: <https://www.youtube.com/user/cityofsantafe/videos>.

- 3. Procurement Library.** Links will be made available on the City's website (https://www.santafenm.gov/affordable_housing) to all useful resources referenced in this RFQ, including:

- Map of the Site
- Summary of Land Use Requirements for project site
- Area Median Income (AMI) Schedule for 2021
- Design Competition Info (GreenWorks Book)
- HDRB –approved Design (2011)
- Q & A (as described below)

4. **Q & A.** Questions regarding the RFQ may be emailed on an ongoing basis to Alexandra Ladd, Director, Office of Affordable Housing at agladd@santafenm.gov. All answers will be posted and made available to other respondents as part of the Procurement Library. The deadline to submit questions is one week prior to the Submission deadline.

5. **Due Date.** Complete Submissions are due to the Office of Affordable Housing no later than **5PM MDST/MST on October 13, 2021**. Applications will be electronically submitted via email or dropbox to: agladd@santafenm.gov; Attn: Alexandra Ladd, Director, Office of Affordable Housing; RFQ Name: 635 Alto LPDU. **Late or incomplete Submissions will not be accepted.** Amended Submissions, replacing a previous Submission, will only be accepted if received prior to the Submission deadline.

6. **SEQUENCE OF EVENTS SUMMARY**

- | | |
|---|--------------------------|
| a. RFQ Release date | September 15, 2021 |
| b. Letter of Interest | Immediate/ongoing |
| Submit to: agladd@santafenm.gov | |
| c. Information Session | September 21, 2021, 11am |
| Request Zoom Link agladd@santafenm.gov ; recording available at: :
https://www.youtube.com/user/cityofsantafe/videos | |
| d. Deadline to Submit Written Questions | October 6, 2021 |
| e. Deadline to Respond to Written Questions | October 8, 2021 |
| f. Due Date for Submittals | October 13, 2021 |
| No later than 5:00PM Mountain Daylight time | |
| g. Announcement of Selected Project | October 27, 2021 |

REAL ESTATE DONATION AGREEMENT

This REAL ESTATE DONATION AGREEMENT ("**Agreement**") dated this _____ day of _____, 2022, by and between the City of Santa Fe, ("**City**" or "**Donor**") and Habitat for Humanity, a private, not -for-profit, New Mexico organization (or "**Donee**").

WHEREAS, a city may donate land or money for the construction, renovation, or purchase of affordable housing pursuant to NM Const. Art. 9, Section 14 and NMSA 1978, Section 6-27-1, et seq.;

WHEREAS, Donor is the fee simple owner of 635 Alto Street, Santa Fe, NM ("**Site**") that is the subject of the Request for Qualifications ("**RFQ**"), identified as "RFQ: 635 Alto LPDU," was released on September 15, 2021, and four submissions were received; and

WHEREAS, it is the policy of the City to provide incentives and encourage proposals that support the production, acquisition and redevelopment of affordably priced homes in mixed income developments; and

WHEREAS, the development of the Site has been contemplated through several efforts, beginning in 2009, when the City hosted the "Greenworks Design Competition" which called for designs for a multi-income, multi-unit structure that met all land use and historic code requirements, achieved sustainability metrics as determined by "Green Communities" standards, and was financially feasible to develop; and

WHEREAS, the donation of the Site conforms to the City's Five-Year Strategic Housing Plan "Affordable Housing Element," which was adopted in conformance to the Affordable Housing Act by Ordinance No. 2007-23 pursuant to the express statutory authority conferred upon municipalities to enact a housing code in NMSA 1978, Section 3-1 7-6A(8); and

WHEREAS, the donation of the Site was preceded by City of Santa Fe Resolution 2021-38 that expressed the City's intent to donate the Site to a developer certified as a "Qualifying Grantee" under the New Mexico Affordable Housing Act for development of at least five low-priced dwelling units; and

WHEREAS, Donee submitted a RFQ cover letter dated October 13, 2021 and a 15-page RFQ submission document entitled "Santa Fe Habitat for Humanity Affordable Housing Project" (collectively "**RFQ Submission**"), and the Evaluation Committee subsequently selected the Donee as a development partner, and eventual owner of the Site, for approval by the Governing Body; and

WHEREAS, the City of Santa Fe acknowledges the Donee as a "Qualified Grantee" for purposes of local affordable housing ordinances and compliance with the New Mexico Affordable Housing Act; and

WHEREAS, this is an "arm's length" transaction and no identity of interest exists between

the Donor and the Donee, their staff, Board of Directors, or Elected Officials; and

WHEREAS, Donee acknowledges that the City has no obligations or responsibilities with regard to development of the Site other than the transfer of the Site for those purposes and as warranted in the deed.

Now therefore, it is agreed as follows:

1. SITE

Donor is the fee owner of 635 Alto Street, Santa Fe, New Mexico as depicted on the Boundary Survey Plat recorded in the office of the County Clerk of Santa Fe County, New Mexico, on January 4, 2011, identified as Instrument #1622082, Book 726, Page 006, which is attached hereto as **Exhibit "A"**

2. DONOR'S OWNERSHIP

Donor warrants and represents that it is the sole fee simple owner of the Site and has all necessary authority to sell or donate the Site. There are no other contracts for sale or options involving the Site and no other party has any right, title, or interest in the Site and there are no leases affecting or relating to the Site. Between the date Donor executes this Agreement and Settlement, Donor shall not subject the Site to or consent to any leases, liens, encumbrances, covenants, conditions, restrictions, easements, rights of way, or agreements, or take any other action affecting or modifying the status of title or otherwise affecting the Site without the written consent of the Donee.

3. EFFECTIVE DATE

The date upon which this Agreement shall be finally executed by the authorized representative of Donee and Donor shall be the effective date ("Effective Date") hereof.

4. CONDITIONS PRECEDENT TO CONVEYANCE

Donor hereby agrees to convey to Donee and Donee hereby agrees to accept the donation from Donor, upon the following conditions:

- a. Donee shall successfully obtain approval of its development plan;
- b. Donee shall secure all land use entitlement approvals required to develop the Site;
- c. Donee shall obtain all financing needed to accomplish the project;

5. ACTIONS OR SUITS

Unless set forth by Donor in an attachment to this Agreement, Donor warrants and represents that there are no actions or suits in law or equity or proceedings by any governmental agency now pending or, to the knowledge of the Donor, threatened against Donor in connection with the Site, and there is no outstanding order, writ, injunction, or decree of any court or governmental agency affecting the Site.

6. PROFFERS AND COMMITMENTS.

Donor represents there has not been made and will not be made, without Donee's prior written consent, any proffers or other commitments relating to the Site, which would impose any obligation on Donee or its successors and assigns, after Settlement as described in Paragraph 9 below, to make any contribution of money or dedications of land or to construct, install, or maintain any improvements of a public or private nature on or off the Site.

7. OTHER AGREEMENTS.

Donor warrants and represents that the execution and delivery of this Agreement, the completion of the transaction(s) contemplated hereby, and the fulfillment of the terms hereof will not result in a breach of any of the terms or provisions of, or constitute a default under, or conflict with, any agreement, indenture, or other instrument to which Donor is a party or by which it or the Site is bound, or any judgment, decree, order, or award of any court, governmental body, or arbitrator, or any law, rule, or regulation applicable to Donor.

8. SETTLEMENT.

- a. Settlement and delivery of possession shall be within forty-five (45) business days of the approval of all Conditions Precedent to Conveyance listed in Section 4 of this agreement, allowing a reasonable time for preparation of documents ("Settlement"). Settlement shall be held at the offices of Stewart Title Company, as the "Settlement Agent," or at such other place as the parties may agree. Donor shall deliver to Donee, at Settlement, a fully executed special warranty deed conveying the Site in fee simple to Donee, ("Deed"). Donee will pay for all costs associated with the closing.
- b. Donor shall deliver to Donee at Settlement an affidavit, on a form acceptable to Donee or Donee's title insurance company, signed by Donor, that no labor or materials have been furnished to the Site within the statutory period for the filing of mechanics' or materialmen's liens against the Site, or if labor or materials have been furnished during the statutory period, an affidavit that the costs thereof have been paid in full.
- c. Donor agrees to deliver to Donee or Settlement Agent the following at or prior to Settlement:
 - (i) The fully executed Special Warranty Deed, see example as **Exhibit B**;
 - (ii) The signed closing or settlement statement prepared or approved by Settlement Agent; and
 - (iii) Any other documents reasonably required by Settlement Agent or Donee.
- d. Donee agrees to record a Land Use Restriction on the property that will be for 45 years, see example as **Exhibit C**.
- e. Donee agree that upon the sale of each LPDU, or a similarly price-restricted residence, Donee shall execute and record a "Declaration of Restrictive Covenants, Right of First Refusal and Equity Share" document substantially in the form of the attached **Exhibit D**, which may be amended from time-to-time, thus assuring the Site will be used for price-restricted residences in perpetuity

9. TITLE.

The Site shall be conveyed free from all mortgages, deeds of trust, liens, security interests, and other financial encumbrances.

10. EXPENSES OF SETTLEMENT.

- a. Donee shall pay for its own attorney's fees as well as other charges customarily paid by a Donee of real estate in New Mexico.
- b. Donee shall pay for the preparation of any documents it is required to provide hereunder, and its own attorney's fees as well as other charges customarily paid by a Donor of real estate in New Mexico.
- c. All real estate taxes, assessments, utility charges, and rent, if any, shall be prorated as of the date conveyance is executed.

11. USE OF SITE.

- a. Donee shall use the Site solely for the purpose of developing low priced dwelling units (“LPDU”), or similarly price-restricted residences, as provided for in the RFQ and RFQ Submission.

12. DEFAULT.

In the event of any default, the non-defaulting party shall be entitled to pursue any remedies at law or inequity in connection with the default of the other party. The election to terminate this Agreement under the terms hereof shall not constitute a default.

13. PRIOR AGREEMENTS MERGER.

This Agreement supersedes any and all prior understandings and agreements between the parties and constitutes the entire agreement between them. No representations, warranties, conditions, or statements, oral or written, not contained herein shall be considered a part hereof. This Agreement may not be amended, altered, or modified except by an instrument in writing signed by the party sought to be charged therewith.

12. NOTICES.

Any notices required or permitted to be given hereunder shall be deemed to have been properly given if sent by United States certified or registered mail, return receipt requested, postage prepaid, or if delivered in hand, as follows:

If delivered or mailed to

Donor: City of Santa Fe
Attn. City Attorney’s Office
PO Box 909
Santa Fe, NM 87504-0909

With a copy to:

City of Santa Fe
Attn. Asset Development Manager
500 Market Street, Suite 200
Santa Fe, NM 87504

Donee:

Habitat for Humanity
Attn. Mr. Kurt Krahn, Executive Director
2520 Camino Entrada, Ste. A
Santa Fe, NM 87507-4885

13. GOVERNING LAW.

Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all terms and provisions hereof shall be construed and enforced in accordance with the laws of the STATE OF NEW MEXICO.

14. CERTIFICATES AND DOCUMENTS INCORPORATED.

The following certificates and documents shall be attached hereto and incorporated herein to the extent they are consistent with the terms and conditions of this Agreement:

- a. RFQ: 635 Alto LPDU.
- b. Donee RFQ submission cover letter dated October 13, 2021 (1 page).
- c. Donee RFQ submission entitled "Santa Fe Habitat for Humanity Affordable Housing Project (15 pages).

15. MISCELLANEOUS.

Subject to the provisions hereof, this Agreement shall bind and inure to the benefit of the parties hereto, their heirs, personal representatives, successors, and permitted assigns. No assignment of this Agreement shall be permitted except with the written consent of the other party, which consent shall not be withheld unreasonably. The warranties, representations, and terms of this Agreement shall survive delivery of the Deed and shall not be merged therein.

16. EXECUTION OF CONVEYANCE.

The approval and execution of this Donation Agreement grants the authority to fully execute the conveyance of the property via special warranty by the Mayor.

[The remainder of this page is blank. Signatures are on the following pages.]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

DONEE:

CITY OF SANTA FE

ALAN WEBBER, MAYOR

ATTEST:

KRISTINE BUSTOS MIHELICIC, CITY CLERK

APPROVED AS TO FORM FOR LEGAL SUFFICIENCY:

Andrea Salazar
Andrea Salazar (May 20, 2022 14:05 MDT)

ASSISTANT CITY ATTORNEY

APPROVED AS TO FINANCE:

ALEXIS LOTERO, INTERIM FINANCE DIRECTOR

EXHIBIT B
To the Donation Agreement

SPECIAL WARRANTY DEED

The City of Santa Fe, a Municipal Corporation, whose address is 200 Lincoln Avenue, Santa Fe, New Mexico, 87504-0909, for no consideration paid, grants to Habitat for Humanity, a private, not -for-profit organization, whose address is 2520 Camino Entrada Ste. A, Santa Fe, NM 87507, the following described real estate in Santa Fe County, New Mexico:

A parcel of land lying and being situate within the municipal limits of the City of Santa Fe, County of Santa a distance of 112.62 feet to a point; thence S. 89° 37' 07" E., a distance of 109.63 feet to a point; thence S. 17° 43' 57" W., a distance of 119.93 feet to the point and place of beginning.

Being and intended to be Parcel #122 as shown and delineated on plat of survey by Joseph L Pacheco, P.E. & L.S. No. 3905, entitled "PLAT OF SURVEY SHOWING LANDS IN GUADALUPE NEIGHBORHOOD REPLAT OF PORTIONS OF KINGS MAP BLOCK 61 & 62 Fe, State of New Mexico, being more particularly bounded and described as follows:

Beginning at a point for the southeast corner of the parcel which is a point that bears S. 5° 55' 5" E., a distance of 21.31 feet to the center of City of Santa Fe sanitary sewer manhole #20 Line A-6. Thence from said point of beginning, N. 88° 06' 05" W., a distance of 82.42 feet to a point; thence N. 4° 43' 17" E., PLAT-I..". The plat is recorded in the Office of the County Clerk of Santa Fe County, New Mexico, as Document No. 438267 in Plat Book 69, page 7. Parcel contains 10910 square feet more or less.

with special warranty covenants, together with all and singular the rights and appurtenances thereto in anywise belonging including, without limitation, all rights, privileges, and easements, and conditions, and subject to covenants, restrictions, rights, rights-of-way and easements now of record, if any. Also subject to those restrictions and conditions as contained on "Real Estate Donation Agreement between the City of Santa Fe and Habitat for Humanity, dated _____, 2022, the Land Use Restriction Agreement, dated _____, and on "Declaration of Affordable Housing Restrictive Covenant" by Habitat for Humanity, dated _____, 2022.

This deed is an absolute conveyance, the Grantor having donated the above described property to the Grantee for a fair and adequate consideration. Grantor declares that this conveyance is freely and fairly made to Grantee, and by its acceptance hereof, does hereby assume and agree to pay all obligations and any ad valorem taxes, following the date of recording of this deed in the records of the Santa Fe County Clerk.

Witness my hand and seal this _____ day of _____, 20_____.

CITY OF SANTA FE

ALAN M. WEBBER, MAYOR

ATTEST:

KRISTINE BUSTOS MIHELICIC, CITY CLERK

ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)SS.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this ___ day of _____, 20___ by Alan M. Webber,
Mayor of the City of Santa Fe.

ACCEPTANCE by Habitat for Humanity, a private, not -for-profit organization of donation of real estate
and conditioning imposed thereon by Grantor.

HABITAT FOR HUMANITY

KURT KRAHN, EXECUTIVE DIRECTOR

ACKNOWLEDGMENT

STATE OF NEW MEXICO
NOTARY PUBLIC
MARILYN E. PERRYMAN
COMMISSION # 1112117
EXPIRES MAY 20, 2023

STATE OF NEW MEXICO)
)SS.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this 25 day of April, 2022 by Kurt Krahn,
Executive Director of Habitat for Humanity.

Expire, 5/20/2023
Marilyn E Perryman

**EXHIBIT C
To the Donation Agreement**

**DECLARATION OF
AFFORDABLE HOUSING
RESTRICTIVE CONVENANT**

Habitat for Humanity, a private, not-for-profit, New Mexico organization, (the "Declarant") hereby declares, until December 31, 2067, that the property described in attached **Exhibit A** (the "Property") shall be used for residential housing for persons or households of low or moderate income within the meaning of New Mexico Statutes Annotated Chapter 6, Article 27 and consistent with Santa Fe City Code Chapter 26. This covenant is for the benefit of, and is enforceable by, the City of Santa Fe (the "City"). This covenant shall run with the land until December 31, 2067, at which point this covenant shall expire and be of no further force and effect without any further action being necessary from the City, the Declarant, or the then owner of the property.

BY:

HABITAT FOR HUMANITY



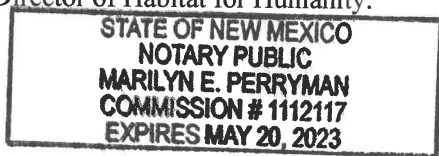
KURT KRAHN, EXECUTIVE DIRECTOR

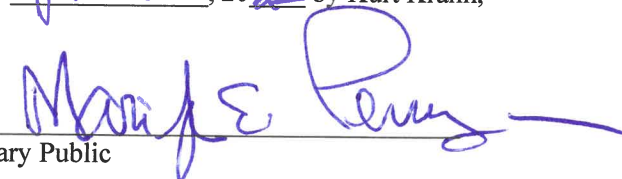
ACKNOWLEDGMENT

STATE OF NEW MEXICO)
)ss.
COUNTY OF SANTA FE)

This instrument was acknowledged before me this 25 day of April, 2022 by Kurt Krahn, Executive Director of Habitat for Humanity.

Seal:





Notary Public

My Commission Expires:

5/20/2023

EXHIBIT A
To the Declaration of Affordable
Housing Restrictive Covenant

A parcel of land lying and being situated within the municipal limits of the City of Santa Fe, County of Santa Fe, State of New Mexico, being more particularly bounded and described as follows:

Beginning at a point for the southeast corner of the parcel which is a point that bears S. 5° 55' 5" E., a distance of 21.31 feet to the center of City of Santa Fe sanitary sewer manhole #20 Line A-6. Thence from said point of beginning, N. 88° 06' 05" W., a distance of 82.42 feet to a point; thence N. 4° 43' 17" E., a distance of 112.62 feet to a point; thence S. 89° 37' 07" E., a distance of 109.63 feet to a point; thence S. 17° 43' 57" W., a distance of 119.93 feet to the point and place of beginning.

Being and intended to be Parcel #122 as shown and delineated on plat of survey by Joseph L Pacheco, P.E. & L.S. No. 3905, entitled "PLAT OF SURVEY SHOWING LANDS IN GUADALUPE NEIGHBORHOOD REPLAT OF PORTIONS OF KINGS MAP BLOCK 61 & 62 PLAT-I.". The plat is recorded in the Office of the County Clerk of Santa Fe County, New Mexico, as Document No. 438267 in Plat Book 69, page 7. Parcel contains 10910 square feet more or less.

SPECIAL WARRANTY DEED

The City of Santa Fe, a Municipal Corporation, whose address is 200 Lincoln Avenue, Santa Fe, New Mexico, 87504-0909, for consideration paid, grants to Habitat for Humanity, a private not-for-profit New Mexico organization, whose address is 2520 Camino Entrada, Ste. A, Santa Fe, New Mexico 87507-4885, the following described real estate in Santa Fe County, New Mexico:

LEGAL DESCRIPTION

A certain parcel of land located at 635 Alto Street, situated within Projected Section 23, Township 17 North, Range 9 East, N.M.P.M., within the Santa Fe Grant, City and County of Santa Fe, New Mexico, being more particularly described as follows, to-wit:

Beginning at a point for the southeast corner of the parcel which is a point that bears S. 5° 55' 05" E., a distance of 21.31 feet to the center of City of Santa Fe sanitary sewer manhole #20 Line A-6; thence from said point of beginning N. 88° 06' 05" W., a distance of 82.42 feet to a point; thence N. 04° 43' 17" E., a distance of 112.62 feet to a point; thence, S. 89° 37' 07" E., a distance of 109.63 feet to a point; thence S. 17° 43' 57" W., a distance of 119.93 feet to the point and place of beginning. Being and intended to be Parcel #122 as shown and delineated on plat of survey by Joseph I. Pacheco, P.E. & L.E. No. 3905, entitled "PLAT OF SURVEY SHOWING LANDS IN GUADALUPE NEIGHBORHOOD...PLAT – I," said plat is recorded in the Office of the County Clerk of Santa Fe County, New Mexico, as Document No. 438,267 in Plat Book 69, page 7.

with warranty covenants, together with all and singular the rights and appurtenances thereto in anywise belonging including, without limitation, all rights, privileges, and easements, and conditions, and subject to covenants, restrictions, rights, rights of way and easements now of record, if any. Grantee, by its acceptance hereof, does hereby assume and agree to pay ad valorem taxes for calendar year 2022, if any, following the date of recording of this Deed in the records of the Santa Fe County Clerk. This deed is an absolute conveyance, the Grantor having donated the above-described property to the Grantee for a fair and adequate consideration. Grantor declares that this conveyance is freely and fairly made.



CITY OF SANTA FE PROCUREMENT CHECKLIST

Contractor Name: New Mexico Arts contract: Cristina Marie Gonzalez DBA Cristina Gonzalez Studio

Procurement Title: Water Street Restroom Art Procurement - NM Arts Contracts

Procurement Method: State Price Agreement Cooperative Sole Source Other

Exempt Request For Proposal (RFP) Invitation To Bid (ITB) Contract under 60K Contract over 60K

Department Requesting Arts and Culture Staff Name Pauline Kanako Kamiyama

Procurement Requirements:

A procurement file shall be maintained for all contracts, regardless of the method of procurement. The procurement file shall contain the basis on which the award is made, all submitted bids, all evaluation materials, score sheets, quotations and all other documentation related to or prepared in conjunction with evaluation, negotiation, and the award process. The procurement shall contain a written determination from the Requesting Department, signed by the purchasing officer, setting forth the reasoning for the contract award decision before submitting to the Committees.

REQUIRED DOCUMENTS FOR APPROVAL BY PURCHASING*

YES N/A

- Approved Procurement Checklist (by Purchasing)
- Memo addressed to City Manager (under 60K) Committees/City Council (over 60K)
- State Price Agreement
- RFP
- Evaluation Committee Report
- ITB
- Bib Tab
- Quotes (3 valid current quotes)
- Cooperative Agreement
- Sole Source Request and Determination Form
- Contractors Exempt Letter
- Purchasing Officers approval for exempt procurement
- BAR
- FIR
- Executed Contract, Agreement or Amendment
- Current Business Registration and CRS numbers on contract or agreement
- Summary of Contracts and Agreements form
- Certificate of Insurance
- All documentation presented to Committees
- Other:

Pauline Kanako Kamiyama Director 8/10/22

Department Rep Printed Name (attesting that all information included) Title Date
 Contracts Supervisor Aug 26, 2022

Purchasing Officer (attesting that all information is reviewed) Title Date

Include all other substantive documents and records of communication that pertain to the procurement and contract.



City of Santa Fe, New Mexico


Memorandum



DATE: September 22, 2022

TO: Governing Body
Finance Committee
Quality of Life Committee

VIA: Emily Oster, Finance Department Director
Joann Lotero, Chief Procurement Officer *Richard Brown*
Rich Brown, Community Development Department Director

FROM:  Pauline Kanako Kamiyama, Arts and Culture Department Director

ITEM AND ISSUE:

Request for Approval of Art in Public Places Purchase Contract with the State of New Mexico Department of Cultural Affairs, New Mexico Arts Division and Christina Marie Gonzalez dba Christina Gonzalez Studio for the Display of Artwork on City Property with the City's Portion in the Total Amount of \$4300. (Pauline Kanako Kamiyama, Arts and Culture Division Director: pkkamiyama@santafenm.gov, 505-955-6653)

BACKGROUND AND SUMMARY:

As a function of Capital Improvement Projects, 2% of Bonds are applied to the purchase and installation of Public Art at bond location sites. Santa Fe Municipal Airport's Bond funding resides in State of NM purview and managed by their policies and procurement through New Mexico Arts. Selection and purchase of artwork managed by NM Arts.

PROCUREMENT METHOD:

State Procurement Exemption: 13-1-98 T {State Agency} - works of art for museums or for display in public buildings or places

CONTRACT NUMBER:

The FY23 Munis contract number is 3203546

FUNDING SOURCE:

3502775/572970

- \$4,300 City
- \$5,500 State

ACTION REQUESTED:

Department Name respectfully requests your review and approval.

CXT#	23005.0	CXTS	\$5,500 (O/A \$4,300)	AIPP PC	MD
FUND STREAM:	50500—69800—A19D5001—548700—D3206/\$5,500				
VENDOR ID:					

**STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
NEW MEXICO ARTS DIVISION
ART IN PUBLIC PLACES PURCHASE CONTRACT**

THIS AGREEMENT is made and entered into by and between New Mexico Arts (NMAD), a division of the New Mexico Department of Cultural Affairs (NMDCA), a political subdivision of the State of New Mexico (State); **City of Santa Fe**, hereinafter referred to as "Owner Agency"; and **Cristina Marie Gonzalez DBA Cristina Gonzalez Studio** hereinafter referred to as "Artist".

WHEREAS, the Art in Public Places Act, NMSA 1978, Section 13-4A-1 (1986), (the "Act") requires the allocation of one percent (1%) of certain legislative appropriations for capital expenditures to be set aside in a fund dedicated for the acquisition or commission of works of art to be used in, upon, or around public buildings;

WHEREAS, NMAD is authorized to administer the art in public places fund pursuant to the Act;

WHEREAS, the Owner Agency desires to acquire a work of art to be located at **Santa Fe Public Restrooms, 100 Water St., Santa Fe, NM 87501**; and

WHEREAS, in conformity with NMAC, 4.12.11 and the Act, the Owner Agency's Local Selection Committee selected a work by the Artist to purchase.

THEREFORE, NMAD, the Owner Agency, and the Artist, for consideration and under the conditions hereinafter set forth, agree as follows:

Article 1. Scope of Services

1.0 Definitions.

- a) "Artwork" means the work of art designed and created by the Artist and selected by the Local Selection Committee for placement of **one (1) 48" x 60" x 12" fabricated steel wall hanging sculpture depicting cut out flowers and leaves entitled, "Acero Picado"** and includes any attached Work Base(s);
- b) "Work Base" is a component of the Artwork and means the foundation or pedestal and Plexiglas cover upon which the Artwork is mounted for displaying 3D Artwork, or frame and Plexiglas protective covering, and device/devices for hanging 2D Artwork, as required according to attached *Framing, Installation, and Plaque Guidelines*;
- c) "Work Site" means the specific area site within, upon, or around the public building in which the Artwork is to be permanently displayed, attached or installed, in this case the **Santa Fe Public Restrooms, 100 Water St., Santa Fe, NM 87501**;
- d) "Owner Agency" is the agency that received the appropriation for the construction or renovation of the building that included funds designated for public art under the Act.

1.1 General Duties of Artist, Owner Agency, and NMAD.

a) The **Artist** shall perform all services and furnish all supplies, material and equipment as necessary for the creation of the Artwork and the transportation of the Artwork and Work Base, to the Work Site and the secure installation of the Artwork and Work Base at the Work Site, except as otherwise agreed to in this Contract.

b) The **Artist** represents and warrants that the Artwork is solely the result of the artistic effort of and was authored by the Artist and is unique and original, except as otherwise disclosed in writing to NMAD and the Owner Agency. If the Artwork is one in an edition (not exceeding a total of fifty (50) copies, including variations of size, color, shape, or any distinguishing elements of the Artwork) of prints, photographs, castings or fabrications, or has been previously reproduced and accepted for sale elsewhere, the Artist will notify NMAD and the Owner Agency of this and disclose the edition number of the piece within the edition in writing to NMAD and the Owner Agency as an addendum attached to this agreement before it is executed. The Artist further represents, covenants, and warrants that the Artist owns the copyright in the Artwork and that the Artwork does not infringe upon any copyright and is free and clear of any liens or claims from any source whatsoever.

c) The **Artist** shall pay for the services of a professional fine art conservator if NMAD deems such an expense is required and if the Artwork is: 1) an exterior work; 2) created with non-archival media; 3) exposed to

adverse environmental conditions; or 4) comprised of media that may not be durable or has other maintenance concerns. The fine art conservator will determine the durability of the media and the required periodic maintenance. NMAD may terminate the agreement based upon the results of the conservator's report in accordance with Article 10, Termination.

d) The Owner Agency shall perform the following services in a satisfactory and proper manner as determined by NMAD, and is responsible and shall pay for the following:

1. Prepare the Work Site by ensuring safe and reasonable access for the Artist, so that the Artist can install the Artwork;
2. In consultation with NMAD, take reasonable precautions to secure the Work Site, if necessary, for and during the installation of the Artwork.

1.2 Delivery and Installation.

a) The **Artist** shall deliver and securely install the completed Artwork and Work Base at the Work Site no later than **May 30, 2023**.

b) The **Artist** will be responsible for framing and installation of Artwork unless otherwise noted in this Contract. The Artist shall ensure that the Artwork is installed with appropriate anti-theft measures and/or devices to protect the Artwork, as approved in advance by Owner Agency, whose approval shall not unreasonably be withheld.

c) The Artist shall provide and install a project identification plaque for the Artwork, as described in the attached and incorporated *Framing, Installation, and Plaque Guidelines*.

1.3 Post-Installation Documentation.

Within thirty (30) days after the delivery and installation of the Artwork, the Artist shall furnish NMAD and Owner Agency with the following relating to the Artwork as completed:

- (1) a publication-ready JPEG of the Artwork with a minimum resolution of 350 ppi (pixels per inch) and a minimum size of 7 inches on the longest edge;
- (2) a JPEG of the Artwork *in situ* at the Work Site;
- (3) a complete written description of the Artwork;
- (4) written instructions for appropriate maintenance and preservation of the Artwork, including a maintenance schedule; and
- (5) a comprehensive list of all media used in the creation of the Artwork (ex: type of paint, gauge and type of metal, adhesive materials, clay body and firing, acrylic, oil, etc).

1.4 Final Acceptance.

a) The Artist shall advise NMAD, in writing, by furnishing NMAD and Owner Agency the Post-Installation Documentation outlined in Article 1.3, when all the Artwork has been delivered, installed, and accepted, and Artist services required under this Contract have been completed.

b) The Owner Agency shall notify the Artist and NMAD, in writing, using the "Notice of Acceptance" signature area on the NMAD Notice of Acceptance/Final Payment Invoice (NOA/FPI) form, of its final acceptance of the Artwork.

c) If the Owner Agency determines and notifies NMAD within ten (10) days of installation by the Artist that the Artist's services are incomplete or unsatisfactory, the Artist shall resolve the issues to the satisfaction of the Owner Agency and NMAD at no further cost to the Owner Agency or NMAD.

1.5 Risk of Loss.

The risk of loss or damage to the Artwork shall be borne by the Artist until acceptance by the Owner Agency, as indicated by the NMAD-signed (*NOA/FPI*) form. The Artist shall obtain and maintain a policy of insurance in an amount of not less than the purchase price of the Artwork to cover risk of damage or loss to the Artwork until final acceptance by the Owner Agency as required in Article 6 of this Agreement.

1.6 Title.

Title to the Artwork shall pass to the Owner Agency after installation and upon receipt by NMAD of the (*NOA/FPI*) form signed by the Owner Agency. If the Owner Agency fails, within thirty (30) days of installation of the Artwork by the Artist, to return to NMAD an executed (*NOA/FPI*) form, or to notify NMAD of Artist services that are unsatisfactory, title and ownership of the Artwork will automatically transfer to the Owner Agency.

a) The Owner Agency shall put in place insurance against loss or damage to the Artwork in an amount of not less than the purchase price of the Artwork upon transfer of ownership from Artist to the Owner Agency.

b) Title to the Artwork shall be owned by the Owner Agency, subject to applicable inventory requirements set forth by the State of New Mexico.

Article 2. Term.

The Contract shall terminate on **December 31, 2023**, unless terminated pursuant to Article 10 herein.

Any and all obligations arising under Article 1, Sections 1.4, 1.6, 1.6a, and Articles 5, 7, 8 shall survive the termination of this Contract, and such survival shall specifically include any other terms and provisions of the Contract necessary to give full force and effect to said provisions.

Article 3. Compensation and Payment Schedule.

3.1 Fixed Fee.

NMAD shall pay the Artist a fixed fee of **five thousand five hundred dollars and 00/100 cents (\$5,500)** including gross receipts tax and all applicable state and federal taxes, for the services performed under this Contract. Payment to the Artist shall be deducted from the allocation for the Art in Public Places program and shall constitute full compensation for all services, taxes, insurance, filing fees, engineering fees, professional conservator fees, materials, shipping or mailing charges, travel for the Artist or the Artist's subcontractors or employees to be furnished by the Artist under this Contract. NMAD shall pay Artist a single payment of the amount described in this paragraph upon receipt by NMAD after delivery and installation of the selected Artwork, the Project Plaque and any attached Work Base to Work Site and receipt of the *Post-Installation Documentation* by the Artist and the *-NOA/FPI* form *signed by the Owner Agency*, and NMAD. Prior to issuance of payment, an NMAD Coordinator may visit the Work Site to confirm the Artist's compliance with the attached and incorporated *Framing, Installation, and Plaque Guidelines*.

The Owner Agency shall pay the Artist a fixed fee of **four thousand three hundred dollars and 00/100 cents (\$4,300)**, including gross receipts tax and all applicable state and federal taxes, for the services performed under this Contract. Owner Agency shall pay Artist a single payment of the amount described in this paragraph after delivery and installation of the selected Artwork, the Project Plaque, and any attached Word Base to Work Site and signature on a *Final Payment Invoice-NOA* form **signed by the Owner Agency Signatory and NMAD**.

Article 4. Extension of Time.

NMAD shall grant a reasonable extension of time to the Artist in the event that there is a reasonable delay on the part of the Owner Agency in performing its obligations under this Contract, or if conditions beyond the Artist's control or other Acts of God render timely performance of the Artist's services impossible. Failure to fulfill contractual obligations due to conditions beyond a party's reasonable control will not be considered a breach of Contract provided that such obligations shall be suspended, with prior notice to and approval by NMAD, only for the duration of such conditions.

All requests by the Artist or the Owner Agency for time extensions shall be made in writing to NMAD at least eighty (80) days prior to the end of term described in Article 2. NMAD will review all written requests and notify the Owner Agency and the Artist of its decision within ten (10) days of receipt of the written request.

Artist shall not be entitled to additional payment in the event that the Work Site is not completed or otherwise suitable for installation when the Artist is scheduled to install the Artwork. Artist shall obtain confirmation from NMAD that the Work Site is ready for installing the Artwork prior to incurring shipping costs or other costs that are related to installation or placement of the Artwork. In the event of such delay, the parties shall extend the contract term in the length of the delay and NMAD shall approve a new installation schedule in consultation with the Owner Agency.

Article 5. Warranties.

5.1 Warranties of Title.

The Artist represents and warrants that the Artwork: (a) is solely the result of the artistic effort of the Artist; (b) is unique and original, except as otherwise disclosed in writing to NMAD and the Owner Agency; (c) is not a duplicate thereof and has not been accepted for sale elsewhere; (d) does not infringe upon any copyright; and (e) is free and clear of any liens or claims from any source whatsoever. The parties acknowledge and agree that these Warranties of Title shall not terminate and shall survive the termination of this Contract.

5.2 Warranties of Quality and Condition.

The Artist represents and warrants that: (a) the Artwork, as fabricated and installed, will be free of defects in material and workmanship, including any defects or qualities that will cause or accelerate deterioration of the Artwork; and (b) reasonable maintenance of the Artwork will not require procedures in excess of those described in the Artist's maintenance recommendations.

The warranties described in this Article 5.2 shall survive for five (5) years after the final acceptance of the Artwork, with periodic maintenance by the Owner Agency of the Artwork according to instructions provided by the Artist. The Owner Agency shall give written notice to NMAD of any breach of the Artist's warranty within one hundred twenty (120) days of the breach during the five-year period after final acceptance of the Artwork. The Artist shall, at the request of NMAD and the Owner Agency, and at no cost to the Owner or NMAD, cure reasonably and promptly any identified defect of the Artwork which is repairable by the Artist or a professional fine art conservator hired by the Artist. The Artist or a professional fine art conservator shall make such repairs consistent with accepted

practices of professional fine art conservation (including, for example, repair by means of restoration, refurbishing or re-creation of part or all of the Artwork).

Article 6. Insurance.

Until such time that NMAD pays the Artist for the Artwork and title to the Work of Art passes to the Owner Agency, the Artist shall maintain in force during the entire term of this Agreement, the following insurance coverage(s), naming the Owner Agency and NMAD as additional insureds:

a) Commercial General Liability insurance shall be written on an occurrence basis and be a broad as ISO Form CG 00 01 with limits not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate for claims against bodily injury, personal and advertising injury, and property damage. Said policy shall include broad form Contractual Liability coverage and be endorsed to name the City of Santa Fe and the New Mexico Department of Cultural Affairs, including the New Mexico Arts Division, and their officials, officers, employees, and agents as additional insureds.

b) Artist shall provide for 30 days cancellation notice on any Certificate of Insurance form furnished by Artist. Such certificate shall also specifically state the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

Article 7. Reproduction Rights.

7.1 General.

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Artwork, except ownership and possession and any rights as may be limited by or granted in this Contract. The Artist grants to NMAD and the Owner Agency and their successors a perpetual, fully paid, without geographic limitation, and non-revocable, nonexclusive license to use images of the Artwork for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, books about the AIPP program, in whole or in part, and catalogues or other similar publications.

7.2 Artist Credit.

All reproductions by NMAD or the Owner Agency shall credit the Artist and include a copyright notice substantially in the following form: "©[Artist's name], installation date, date of publication, Funded through the Art in Public Places Program of New Mexico Arts, a division of the New Mexico Department of Cultural Affairs."

7.3 Artist Reproduction Credit.

The Artist shall include on or in any image or any other form of reproduction of the Artwork initiated or authorized by the Artist a credit to NMAD in the following form: "Artwork Funded by the Art in Public Places Program, New Mexico Arts Division, Department of Cultural Affairs."

Article 8. Artist's Rights.

8.1 General.

In all matters pertaining to the Artwork and its maintenance, including but not limited to the Articles in this Contract and the provisions of the New Mexico Fine Art in Public Building Act, Sections 13-4B-1 through 13-4B-3, and the federal Visual Artists' Rights Act of 1990 (VARA) shall apply as limited in this Contract.

8.2 Maintenance.

The Owner Agency recognizes that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. The Owner Agency shall reasonably assure that the Artwork is properly maintained and protected, in accordance with the Artist's maintenance schedule, instructions, and the requirements of this Contract.

8.3. Repairs and Restoration.

a) NMAD shall have the right to determine, after consultation with the Owner Agency and a professional fine art conservator, when and if to repair or restore the Artwork. To the extent practicable, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations as recommended by a professional fine art conservator.

b) If the repair or restoration is needed five years or more after payment under this contract, the Owner Agency may procure the Artist's services for repairs or restoration if permissible under New Mexico laws, including but not limited to the Procurement Code and State Use Act.

c) NMAD may deaccession the Artwork if one or more of the following conditions exist: 1) the Artwork is damaged where repair is impractical or costs exceed the value of the Artwork; 2) the Artwork has faults that require repeated and excessive maintenance; 3) future site development requires the artwork be temporarily or permanently moved, relocated, or destroyed; 4) the Artwork endangers public safety; 5) public protest has continued unabated over a period of five years and a public hearing has not led to a solution.

- d) All repairs and restorations shall be made in accordance with accepted practices of professional fine art conservation.
- e) The Owner Agency must notify NMAD in writing if Artwork must be temporarily or permanently uninstalled, relocated, or destroyed one hundred eighty (180) days prior to action taking place.

8.4 Waiver of Rights due to Deaccession

In the future, and in the event the Owner Agency determines to deaccession the Artwork for any reason, including but not limited to an existing condition as outlined in Article 8.3.C., NMAD shall attempt to notify the Artist in writing by certified mail of recommended actions. Notwithstanding the provisions of Copyright Act of 1976, 17 U.S.C. 101 et seq., in the event the Owner Agency must destroy, modify, or develop the Work Site in such a way as to impact the Artwork, the Artist hereby agrees to waive all rights pursuant to the Copyright Act, including but not limited to the Artist's rights under the Visual Artist Rights Act, the Owner Agency, in consultation with NMAD, retain the right to determine, in their sole and absolute discretion without right of appeal, whether and to what extent the Artwork will be restored, repaired, removed, or destroyed.

Article 9. Artist as Independent Contractor.

The Artist, and his/her agents and employees, are independent contractors performing services for NMAD and are not employees of NMAD. The Artist, his/her agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of NMAD, as a result of this Contract.

Article 10. Termination.

- a) If any party violates any of the covenants, agreements or conditions material to the Contract, any of the other parties shall thereupon have the right to terminate this Contract by giving thirty (30) days written notice of termination to all other parties, specifying the grounds for termination, provided that the terminating party or parties makes reasonable attempts to reconcile the reason for termination prior to the notice of termination and that the defaulting party or parties shall have thirty (30) days from their receipt of the notice of default to cure such default or commence actions to cure the default with in the thirty (30) day period when cure of the default is not possible within the thirty (30) days.
- b) If the Owner Agency or NMAD terminate this Contract for the Artist's violation, the Artist shall be ineligible to apply for Art in Public Places selection for a period of three (3) years or more from the date of the Artist's receipt of the notice of termination.
- c) NMAD may terminate this Contract effective on the date of notice of termination if funding from the Legislature becomes unavailable as determined in NMAD's discretion or if NMAD determines that the Artwork is too expensive to maintain after reviewing a conservator's report obtained under Subsection 1.1(c) of this Contract.

Article 11. Contract Administrator.

NMAD shall administer this Contract, including issuing payments to the Artist, except as otherwise agreed to in this contract.

Article 12. Non-Discrimination.

In carrying out the performance of the services designated, neither the Artist nor the Owner Agency shall discriminate as to race, creed, religion, sex, age, national origin or any physical, mental or sensory disability, and the Artist shall comply with the equality of employment opportunity provisions of New Mexico and federal law as presently existing or hereafter amended.

Article 13. ADA Compliance.

In performing any services required hereunder, the Artist shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (the "ADA"). The Artist's responsibility to defend and indemnify NMAD, as provided in this Contract, includes but is not limited to claims arising from the Artist's, or Artist's agents' or employees' acts or omissions in violation of the ADA.

Article 14. Compliance.

The Artist shall comply with federal, state and city statutes, ordinances and regulations that are applicable to the performance of the Artist's services under this Contract.

Article 15. Entire Agreement.

This writing embodies the entire Contract and understanding between the parties hereto, and there are no other contracts, agreements, and understandings, oral or written, with reference to the subject matter hereof that are not superseded hereby.

Article 16. Modification.

No alteration, change or modification of the terms of the Contract shall be valid unless made in writing and signed by all parties hereto and approved by appropriate action of the Owner Agency and NMAD.

Article 17. Waiver.

No waiver of performance by any party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, and conditions of this Contract. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or an acceptance of defective performance.

Article 18. Governing Law and Venue.

This Contract, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of New Mexico. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G). By execution of this Agreement, Artist acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

Article 19. Indemnification.

The Artist shall defend, indemnify and hold harmless the Owner Agency, NMAD and the New Mexico Department of Cultural Affairs, from all actions, proceeding, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Contract, caused by the negligent act or failure to act of the Artist, his officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Artist resulting in injury or damage to persons or property during the time when the Artist or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Contract. In the event that any action, suit or proceeding related to the services performed by the Artist or any officer, agent, employee, servant or subcontractor under this Contract is brought against the Artist, the Artist shall, as soon as practicable but no later than two (2) days after Artist receives notice thereof, notify the legal counsel of the Owner Agency and the New Mexico Department of Cultural Affairs.

Article 20. New Mexico Tort Claims Act.

Any liability incurred by the Owner Agency, NMAD and/or the New Mexico Department of Cultural Affairs, in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The Owner Agency, NMAD and the New Mexico Department of Cultural Affairs, and their “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

Article 21. Heirs and Assigns.

This Contract shall be binding upon and shall inure to the benefit of the Owner Agency, and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

Article 22. Written Notices.

a) All notices, requests, demands and other communications which are required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given upon the receipt thereof.

b) For purposes of giving formal, written notice, the parties will use the following addresses:

<u>OWNER AGENCY</u>	<u>SITE CONTACT</u>	<u>Artist</u>	<u>NMAD</u>
Alan M. Webber Mayor City of Santa Fe P.O. Box 909 Santa Fe, NM 87504 (505) 955-6590 mayor@santafenm.gov	Rod Lambert Assistant Director Santa Fe Arts and Culture Department P.O. Box 990 Santa Fe, NM 87504 (505) 955-6705 rdlambert@santafenm.gov	Cristina Marie Gonzalez Cristina Gonzalez Studio 1873 Candela St. Santa Fe, NM 87505-5602 (505) 670-9579 cristinagonzalezstudio@gmail.com	Meredith Doborski Public Art Program Director New Mexico Arts 407 Galisteo Suite 270 Santa Fe, NM 87501-2641 (505) 827-6490 Meredith.doborski@state.nm.us

c) The Artist and Owner Agency Representative will provide NMAD with notice of any change in address within ten (10) days following that change.

After the final payment in this Contract has been made, the Artist and Owner Agency will notify NMAD of any change in address within thirty (30) days following the change. Failure to notify NMAD of a change of address will waive the Artist's or Owner Agency's rights, respectively, that are described in this Contract, except for the Artist's copyright and reproduction rights.

Article 23. Conflict of Interest.

The Artist warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Contract. The Artist certifies it has not violated or caused any other person to violate any requirement of the Governmental Conduct Act, NMSA 1978, Sections 10-16-1 through 10-16-18, by entering this contract.

Article 24. Bribes, Gratuities, Kickbacks, Applicable Law.

The Procurement Code, NMSA 1978, Sections 13-1-28 through -199, imposes civil and criminal penalties for violation of the Code. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

Article 25. Records and Audits.

The Artist shall maintain, for three years, records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by NMAD, the Owner Agency, the Department of Finance and Administration, and the State Auditor. NMAD, the Department of Finance and Administration, the State Auditor, and the Owner Agency shall have the right to audit billings both before and after payment. Payment under this Contract shall not foreclose the rights of NMAD and the Owner Agency, respectively, to recover excessive or illegal payments.

Article 26. Assignment.

The Artist shall not assign or transfer any interest in this Contract or assign any claims for money due or to become due under this Contract without the prior written approval of NMAD and the Owner Agency.

Article 27. Required Signatures.

This Contract will not be binding upon any parties hereto until all signatures required below have been obtained. Other than as to individuals, each signatory below represents that by signing this agreement that he or she has the authority to bind the entity for which he or she signs.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date of signature below:

DEPARTMENT OF CULTURAL AFFAIRS:

Debra Garcia y Griego, Cabinet Secretary, Department of Cultural Affairs

Date _____

Michelle Laflamme Childs, Executive Director, New Mexico Arts Division

Date _____

Approved as to budgetary sufficiency:

Greg Geisler, ASD Director/CFO, Department of Cultural Affairs

Date _____

Approved as to form:

Peter Ives, General Counsel, Department of Cultural Affairs

Date _____

OWNER AGENCY:

Alan M. Webber, Mayor, City of Santa Fe

Date _____

Attest:

Kristine Bustos Michelcic, City Clerk, City of Santa Fe

Date _____

OWNER AGENCY LEGAL REPRESENTATIVE:

Marcos Martinez
Marcos Martinez (Jul 6, 2022 08:04 MDT)

Marcos D. Martinez, Senior Assistant City Attorney, City of Santa Fe

Date Jul 6, 2022

Approved for Finance:

Alexis Lotero, Acting Finance Director, City of Santa Fe

Date _____

ARTIST:

Cristina Marie Gonzalez DBA Cristina Gonzalez Studio

Date _____

Framing, Installation, and Plaque Guidelines

All framing materials must be museum quality!

1. Mat type - 100% Cotton rag.
2. Mat color – white, off-white, gray, or black. Other colors must be approved by NMAD.
3. Mat size – not to be less than 2 inches all the way around. Other mat sizes or elimination of mat must be approved by NMAD.
4. Backing – Acid free, museum quality.
5. Mounting – Acid free, museum quality.
6. Frame material - simple profile, wood molding, 1.5" or larger on the face. Colors can be natural wood tones, black, or white. Other colors must be approved by NMAD.
7. Plexiglas protective covering required on all 2-D pieces. Glass on pastels.
8. Spacers when necessary, so that Plexiglas does not touch the artwork.
9. Security hangers must be used, no wire (i.e. T-Lock or T-Screw Security Hangers)
10. Weighted wood pedestal with secure bolted Plexiglas cover required on small 3-D works. Other pedestal materials must be approved by NMAD.
11. Pedestals shall be tall enough to bring the artwork to eyelevel.
12. Large scale and/or exterior sculptures do not require Plexiglas covering. "Large Scale" is determined by NMAD in consultation with Artist.
13. All artwork must be permanently installed at the site along with an identification plaque.
14. Pedestals must be painted either black or white. Other colors must be approved by NMAD.

Samples of mats, frames, pedestals and plaques can be viewed at New Mexico Arts office (407 Galisteo, suite 270, Santa Fe, NM). Please call to schedule an appointment (505-827-6490, In State 800-879-4278).

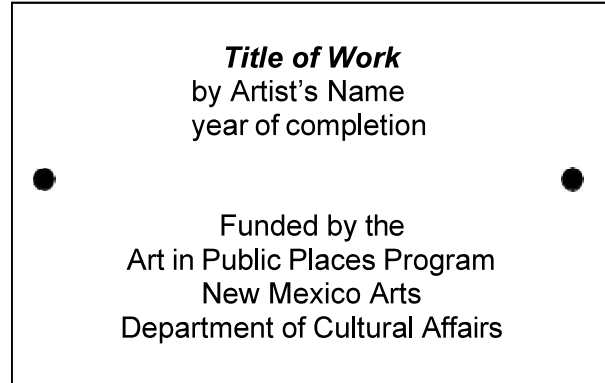
The following guidelines are used for NMAD Art in Public Places Program to maintain plaque quality and style consistency. It is permissible for the font size to be changed to best fit the size of the plaque. (Drawings are not to scale!)

SAMPLE

14 pt Bold Italic Arial Font or Times New Roman
14 pt Plain Arial Font or Times New Roman
14 pt Plain Arial Font or Times New Roman

May or may not have 2 drilled holes for mounting depending on plaque style

12 pt Plain Arial Font or Times New Roman
12 pt Plain Arial Font or Times New Roman
12 pt Plain Arial Font or Times New Roman
12 pt Plain Arial Font or Times New Roman



Interior Pieces

Material and Finish: Metal 3" x 5" plate with brushed silver or brass finish and black lettering on wooden base (black or natural wood) no larger than 5" x 7"



Exterior Pieces

Material and Finish: Metal plate with black finish and silver lettering
Plaque Size: 4" x 6" or 5" x 7"



Please adjust font size to best fit plaque dimensions

VARIATIONS: We understand that because of the nature of the artwork and/or site, plaque variations may be desirable. For example, a tile artist might choose to create a custom tile plaque to integrate into the work. For a large stainless steel exterior sculpture, an artist might wish to use a stainless-steel plaque that is larger than the standard size. We encourage you to think creatively. However, the Artist must consult with New Mexico Arts **before** executing a custom plaque (505-827-6490, In State 800-879-4278).



Acero Picado



City of Santa Fe

Real Estate Summary of Contracts, Agreements, Amendments & Leases

Section to be completed by department

1. Munis Contract # 3203546

Contractor: New Mexico Arts, State of NM Dept. of Cultural Affairs Cristina Marie Gonzalez

Description: art purchase for Art in public places fulfillment for Water Street Restroom facility

Contract Agreement Lease / Rent Amendment

Term Start Date: date of contract execution Term End Date: December 31, 2023

Approved by Council Date: _____

Contract / Lease: contract

Amendment # _____ to the Original Contract / Lease # _____

Increase/(Decrease) Amount \$ _____

Extend Termination Date to: _____

Approved by Council Date: _____

Amendment is for:

2. **HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate** (option: attach spreadsheet if multiple amendments)
As a function of Capital Improvement Projects, 2% of Bonds are applied to the purchase and installation of Public Art at bond location sites. Santa Fe Municipal Airport's Bond funding resides in State of NM purview and managed by their policies and procurement through SetacMm:ica:ritlrts. purchase of artwork managed by NM Arts. There is no cost to the City. State of NM Public Arts Purchase Program- Funded through Bond Initiatives

3. Procurement History: _____

Aug 26, 2022
Purchasing Officer Review: _____ Date: _____

Comment & Exceptions: art exemption to be displayed in public area thus qualifying for 13-1-98 T

4. Funding Source: partial State and partial City Org / Object: 3502775/572970

Aug 26, 2022
Budget Officer Approval: _____ Date: _____

Comment & Exceptions: _____

Staff Contact who completed this form: Pauline Kanako Kamiyama Phone # 470.8482

Email: pkkamiyama@santafenm.gov

To be recorded by City Clerk:

Clerk # _____

Date of Execution: _____



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

7/22/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher & Co. Insurance Brokers of CA, Inc. LIC #0726293 18201 Von Karman, Suite 200 Irvine CA 92612	CONTACT NAME: PHONE (A/C, No, Ext): 949-349-9857		FAX (A/C, No): 949-349-9957
	E-MAIL ADDRESS:		
INSURED City of Santa Fe P.O. Box 909 Santa Fe, NM 87504	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Safety National Casualty Corporation		15105
	INSURER B : Travelers Property Casualty Co of America		25674
	INSURER C : Travelers Indemnity Company		25658
	INSURER D :		
	INSURER E :		
INSURER F :			

COVERAGES

CERTIFICATE NUMBER: 658744908

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y		ZLP-15N80223-22-PA	7/1/2022	7/1/2023	EACH OCCURRENCE	\$ 1,050,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 300,000
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$ 1,050,000
							GENERAL AGGREGATE	\$ 3,000,000
							PRODUCTS - COMP/OP AGG	\$ 3,000,000
								\$
C	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> \$50,000 SIR			H-810-2C410241-IND-22	7/1/2022	7/1/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,050,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			ZUP-15N80235-22-PA	7/1/2022	7/1/2023	EACH OCCURRENCE	\$ 3,000,000
							AGGREGATE	\$ 3,000,000
								\$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	SP4067131	7/1/2022	7/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Certificate holder is included as Additional Insured as respects:

CERTIFICATE HOLDER**CANCELLATION**

EVIDENCE OF COVERAGE ONLY

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

City of Santa Fe, New Mexico

memo

Date: August 26, 2022

To: Joann Lovato, Chief Procurement Officer

From: Pauline Kanako Kamiyama, Arts and Culture Department

Subject: Exemption Determination Request, 13.1.98 T

Cristina Gonzalez artwork

Arts and Culture Department respectfully request exempt determination to be approved by the City's Chief Procurement Officer (CPO), Joann Lovato, for the following scope of work (SOW):

State of New Mexico, New Mexico Arts contract for art purchase for display of artwork on city property at the Water Street Restroom and visitor center in fulfillment of the State's Art in Public Places requirement.

City of Santa Fe follows the New Mexico State Procurement Code (NMPC) & City of Santa Fe Procurement Manual (COSPM).

State procurement exemption: 13.1.98 T (State Agency) – works of art for museums or for display in public buildings or places

Amount:

\$4,300 City 3502775/572970

\$5,500 State

Term: December 31, 2023

Approved Exemption



Joann Lovato, Chief Procurement Officer

VOTE SUMMARY



Meeting Name - Finance Committee

Meeting Start Date - 10/03/2022

Meeting Committee - Finance Committee

Item Title -

Request for Approval of a Termination Agreement with Descartes Labs, Inc. and Associated LEDA Funding Claw Back (Casey Dalbor, Business Growth Manager: cjdalbor@santafenm.gov, 505-955-6912; Andréa Salazar, Assistant City Attorney, asalazar@santafenm.gov, 505-955-6303; Rich Brown, Community and Economic Development Director: rdbrown@santafenm.gov, 505-955-6625).

Committee Review

Finance Committee: 10/03/2022

Quality of Life: 10/05/2022

Economic Development Advisory Committee: 10/12/2022

Governing Body: 10/12/2022

Item Type - resolution

Item Owner - Casey Dalbor

Item Sponsor -

Item Tracking Number - 22-15971

Motion Type - Approve

Motion Mover - Signe Lindell

Motion Seconder - Chris Rivera

Motion Status - approved

Vote For Count - 5

Vote Against Count - 0

Vote Abstain Count - 0

Vote Absent Count - 0

VOTE SUMMARY



City of Santa Fe

Vote For Names - Renee Villarreal, Carol Romero-Wirth, Signe Lindell, Jamie Cassutt, Chris Rivera

Vote Against Names -

Vote Abstain Names -

Vote Absent Names -

User Name -Carolynn Roibal

User Email - croibal@santafenm.gov



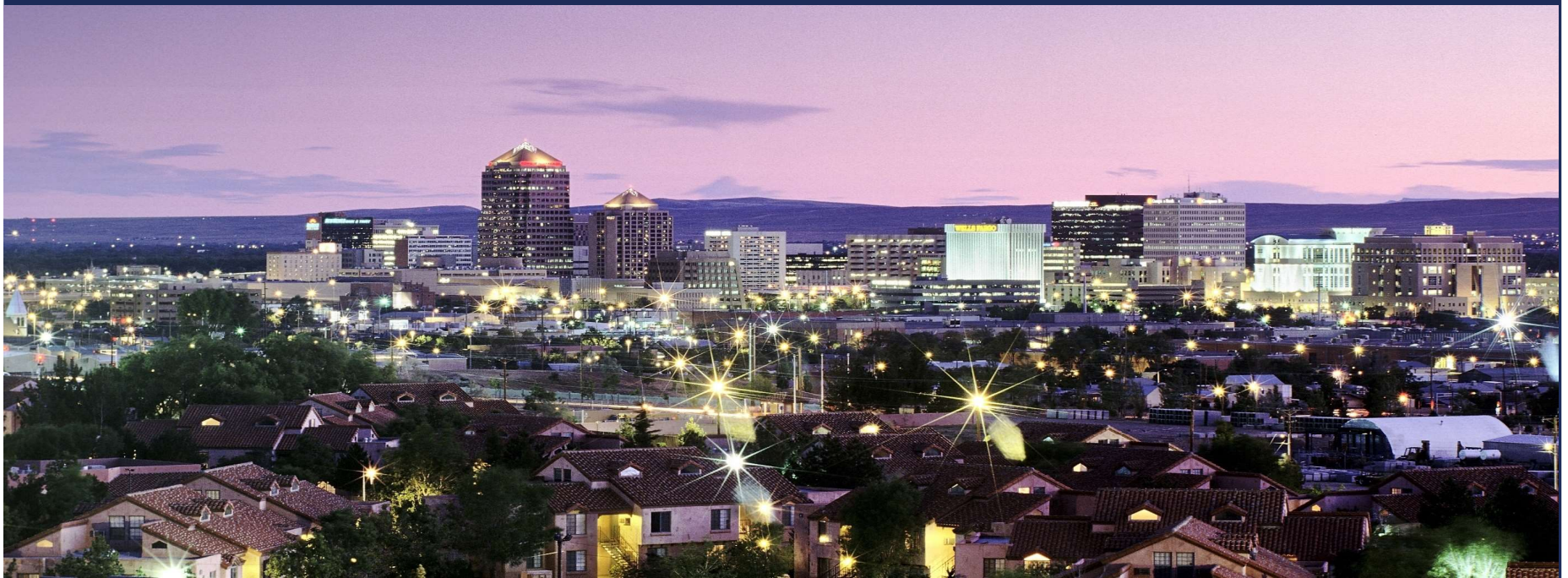
EDD ECONOMIC
DEVELOPMENT
DEPARTMENT

9/15/2022

FISCAL IMPACT ANALYSIS AND ECONOMIC IMPACT OF THE EXPANSION OF DESCARTES LABS

Prepared by:

New Mexico Economic Development Department
Joseph Montoya Building
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505





Purpose and Limitations:

This report and analysis, provided by the New Mexico Economic Development Department, relies on prospective estimates of business activity. These estimates, which are provided by the company, may not be realized due to unforeseen events that are outside the control of the company and unknown to the New Mexico Economic Development Department.

The New Mexico Economic Development Department made reasonable efforts to ensure that the estimates provided by the company, are realistic estimates of future activity.

The model was created by the New Mexico Economic Development Economists and used assumptions to generate the final report. The report and analysis provided by the New Mexico Economic Development Department is not a guarantee that any of the estimates or results contained in this report will actually be achieved.

Introduction:

This report and analysis presents the results of an economic impact analysis performed using a model developed by the New Mexico Economic Development Department. The report estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA).

Most projects produce a growth in population and/or a growth in the workforce in a City, County and the State of New Mexico. All growth comes at a cost, the additional economic activity and population growth stimulated by the project will generate additional costs in terms of providing basic infrastructure (roads and utilities) and public services (including public safety and schools). For example, if the applicant hires employees from outside the State, County and City, those workers who end up relocating their residence to within one or all of those areas, the population for which the government must provide services also increases. The costs associated with the expansion are broken down into two categories: 1) New residents to the State, County and City. 2) New Mexican residents hired to work for the company. The analysis assumes that all workers will live in the area of the expansion.

Description of the Company:

0

Description of the Project:

0



Total Impacts

Fiscal Impact of Existing and Expanded Operations Over the Next Ten Years

Cumulative Net Benefits

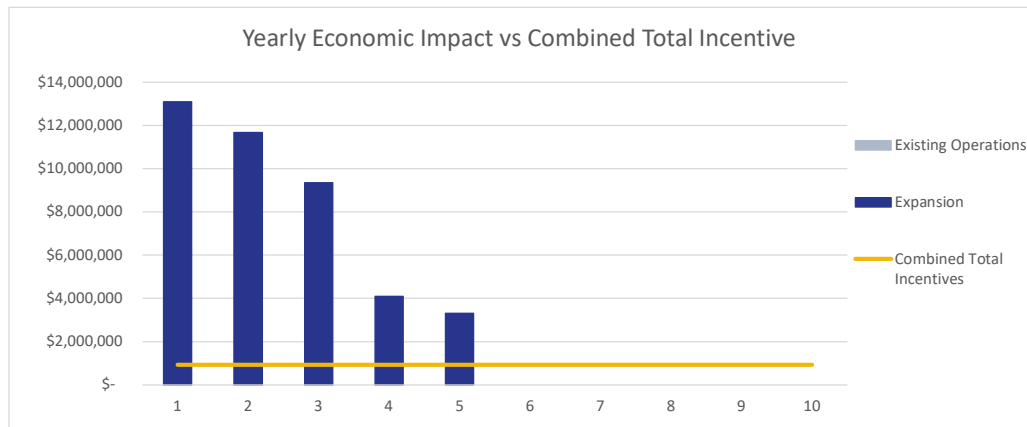
	Existing Operations	Expansion	Existing & Expanded Operations	Present Value of Net Benefits*
State of New Mexico	\$ -	\$ -	\$ -	\$ 1,526,360
County	\$ -	\$ -	\$ -	\$ 273,679
City	\$ -	\$ -	\$ -	\$ 313,868
School District	\$ -	\$ -	\$ -	\$ 32,482
Special Taxing District	\$ -	\$ -	\$ -	\$ 13,196
Total	\$ -	\$ -	\$ -	\$ 2,159,585

* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

** In the cumulative net benefits of the existing and expanded operations for the State of New Mexico, corporate income tax has been removed from the existing operations total to avoid double counting.

Total Economic Impact

	Total
Estimated Economic Impact Over 10 Years:	\$ 41,505,507
Combined Total Incentive Over 10 Years:	\$ 937,393
Economic Impact Rate of Return:	4,328%

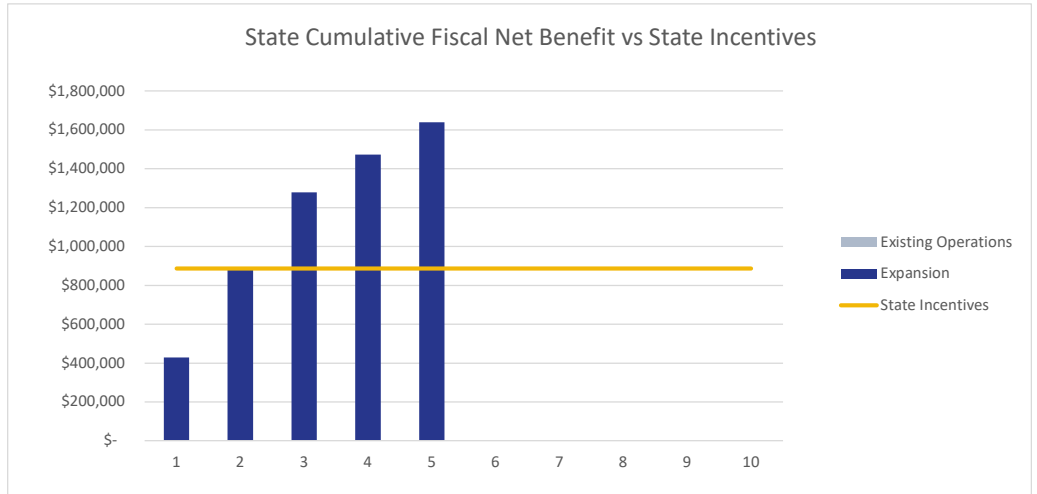


Workers and New Residents over 10 years

	Direct	Indirect and Induced
Number of Jobs Created:	0	0
Estimated Number of Construction Workers:	0	
Estimated Number of New Residents to the State:		0
Estimated Number of New Residents to the County:		0
Estimated Number of New Residents to the City:		0

State Impacts





Incentives

Total State Incentive:	\$ 887,393
State Incentive Per Job:	N/A

Combined Payback and Return

State Payback Period Combined:	1.99 Years
State Rate of Return Combined:	72%

Expansion Only Payback and Return

State Payback Period Expansion:	1.99 Years
State Rate of Return Expansion:	72%

State Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

State Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 428,728	\$ -	\$ 428,728	\$ 428,728
2	\$ 464,041	\$ -	\$ 464,041	\$ 892,769
3	\$ 386,941	\$ -	\$ 386,941	\$ 1,279,710
4	\$ 193,483	\$ -	\$ 193,483	\$ 1,473,193
5	\$ 167,233	\$ -	\$ 167,233	\$ 1,640,426
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

State Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 428,728	\$ -	\$ 428,728	\$ 428,728
2	\$ 464,041	\$ -	\$ 464,041	\$ 892,769
3	\$ 386,941	\$ -	\$ 386,941	\$ 1,279,710
4	\$ 193,483	\$ -	\$ 193,483	\$ 1,473,193
5	\$ 167,233	\$ -	\$ 167,233	\$ 1,640,426
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

State Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$ 896,329
Personal Income Taxes	\$ 1,653,179
Corporate Income Taxes	\$ -
Misc. Taxes and Revenue	\$ -
Subtotal of Benefits	\$ 2,549,507

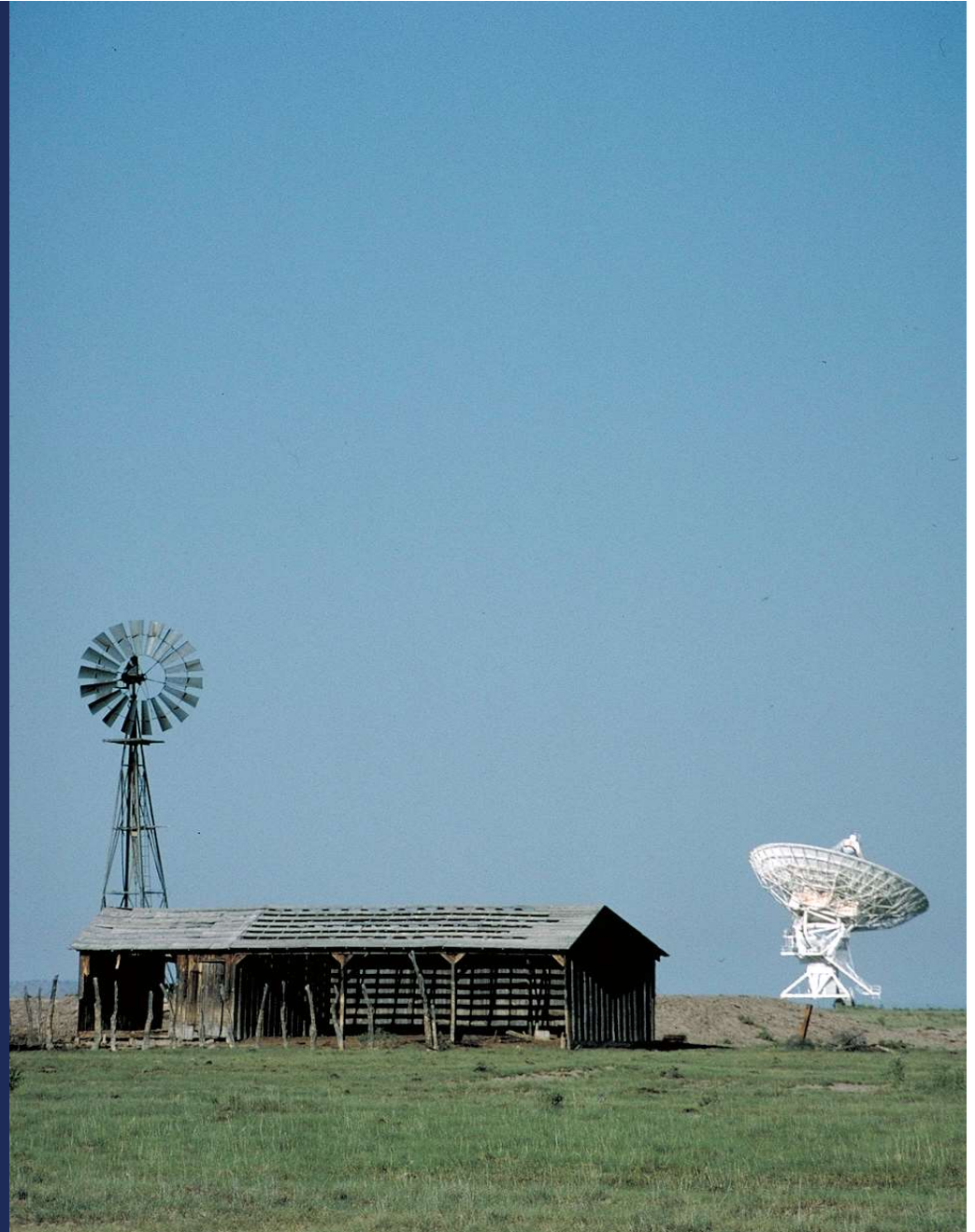
Costs

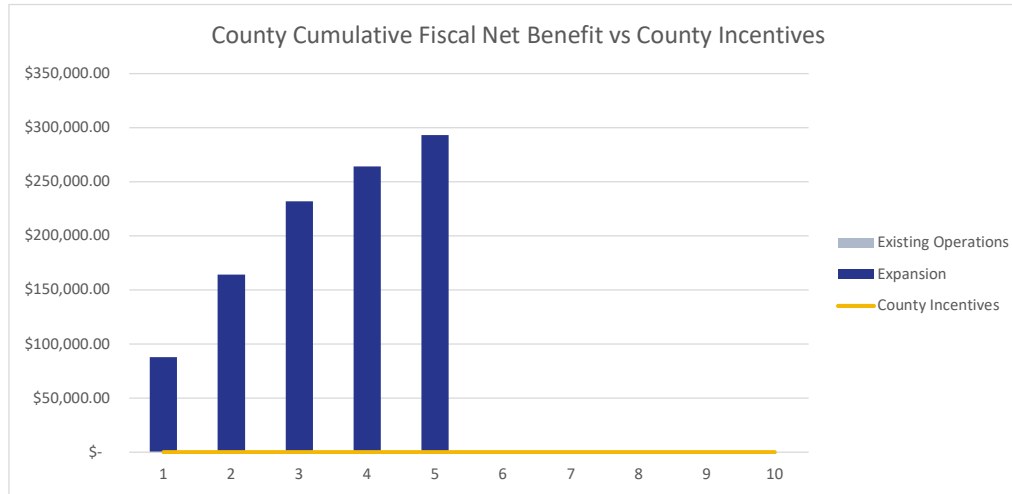
Costs	\$ -
Subtotal of Costs	\$ -

Net Benefits

Net Benefits	\$ 2,549,507
Present Value	\$ 1,526,360

County Impacts





Incentives

Total County Incentive:	\$	-
County Incentive Per Job:	N/A	

Combined Payback and Return

County Payback Period Combined:	-	Years
County Rate of Return Combined:	N/A	

Expansion Only Payback and Return

County Payback Period Expansion:	-	Years
County Rate of Return Expansion:	N/A	

County Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

County Net Benefits Of Expansion

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	87,813	\$	-	\$	87,813	\$ 87,813
2	\$	76,462	\$	-	\$	76,462	\$ 164,275
3	\$	67,755	\$	-	\$	67,755	\$ 232,030
4	\$	32,057	\$	-	\$	32,057	\$ 264,087
5	\$	29,048	\$	-	\$	29,048	\$ 293,134
6	\$	-	\$	-	\$	-	-
7	\$	-	\$	-	\$	-	-
8	\$	-	\$	-	\$	-	-
9	\$	-	\$	-	\$	-	-
10	\$	-	\$	-	\$	-	-

County Combined Net Benefits

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	87,813	\$	-	\$	87,813	\$ 87,813
2	\$	76,462	\$	-	\$	76,462	\$ 164,275
3	\$	67,755	\$	-	\$	67,755	\$ 232,030
4	\$	32,057	\$	-	\$	32,057	\$ 264,087
5	\$	29,048	\$	-	\$	29,048	\$ 293,134
6	\$	-	\$	-	\$	-	-
7	\$	-	\$	-	\$	-	-
8	\$	-	\$	-	\$	-	-
9	\$	-	\$	-	\$	-	-
10	\$	-	\$	-	\$	-	-

County Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$ 344,742
Misc. Taxes and Revenue	-
Property Taxes	\$ 101,247
Subtotal of Benefits	\$ 445,989

Costs

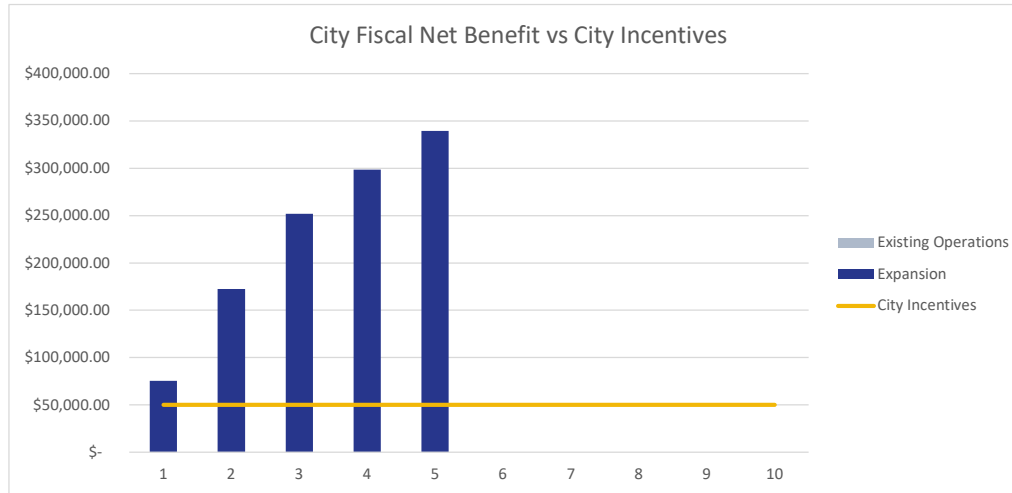
Costs	\$ -
Subtotal of Costs	\$ -

Net Benefits

Net Benefits	\$ 445,989
Present Value	\$ 273,679

City Impacts





Incentives

Total City Incentive:	\$ 50,000
City Incentive Per Job:	N/A

Combined Payback and Return

City Payback Period Combined:	0.66 Years
City Rate of Return Combined:	528%

Expansion Only Payback and Return

City Payback Period Expansion:	0.66 Years
City Rate of Return Expansion:	528%

City Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

City Net Benefits Of Expansion

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	75,593	\$	-	\$	75,593	\$ 75,593
2	\$	96,967	\$	-	\$	96,967	\$ 172,560
3	\$	79,355	\$	-	\$	79,355	\$ 251,915
4	\$	46,776	\$	-	\$	46,776	\$ 298,692
5	\$	40,769	\$	-	\$	40,769	\$ 339,460
6	\$	-	\$	-	\$	-	-
7	\$	-	\$	-	\$	-	-
8	\$	-	\$	-	\$	-	-
9	\$	-	\$	-	\$	-	-
10	\$	-	\$	-	\$	-	-

City Combined Net Benefits

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	75,593	\$	-	\$	75,593	\$ 75,593
2	\$	96,967	\$	-	\$	96,967	\$ 172,560
3	\$	79,355	\$	-	\$	79,355	\$ 251,915
4	\$	46,776	\$	-	\$	46,776	\$ 298,692
5	\$	40,769	\$	-	\$	40,769	\$ 339,460
6	\$	-	\$	-	\$	-	-
7	\$	-	\$	-	\$	-	-
8	\$	-	\$	-	\$	-	-
9	\$	-	\$	-	\$	-	-
10	\$	-	\$	-	\$	-	-

City Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$ 534,205
Misc. Taxes and Revenue	-
Property Taxes	\$ 25,598
Subtotal of Benefits	\$ 559,803

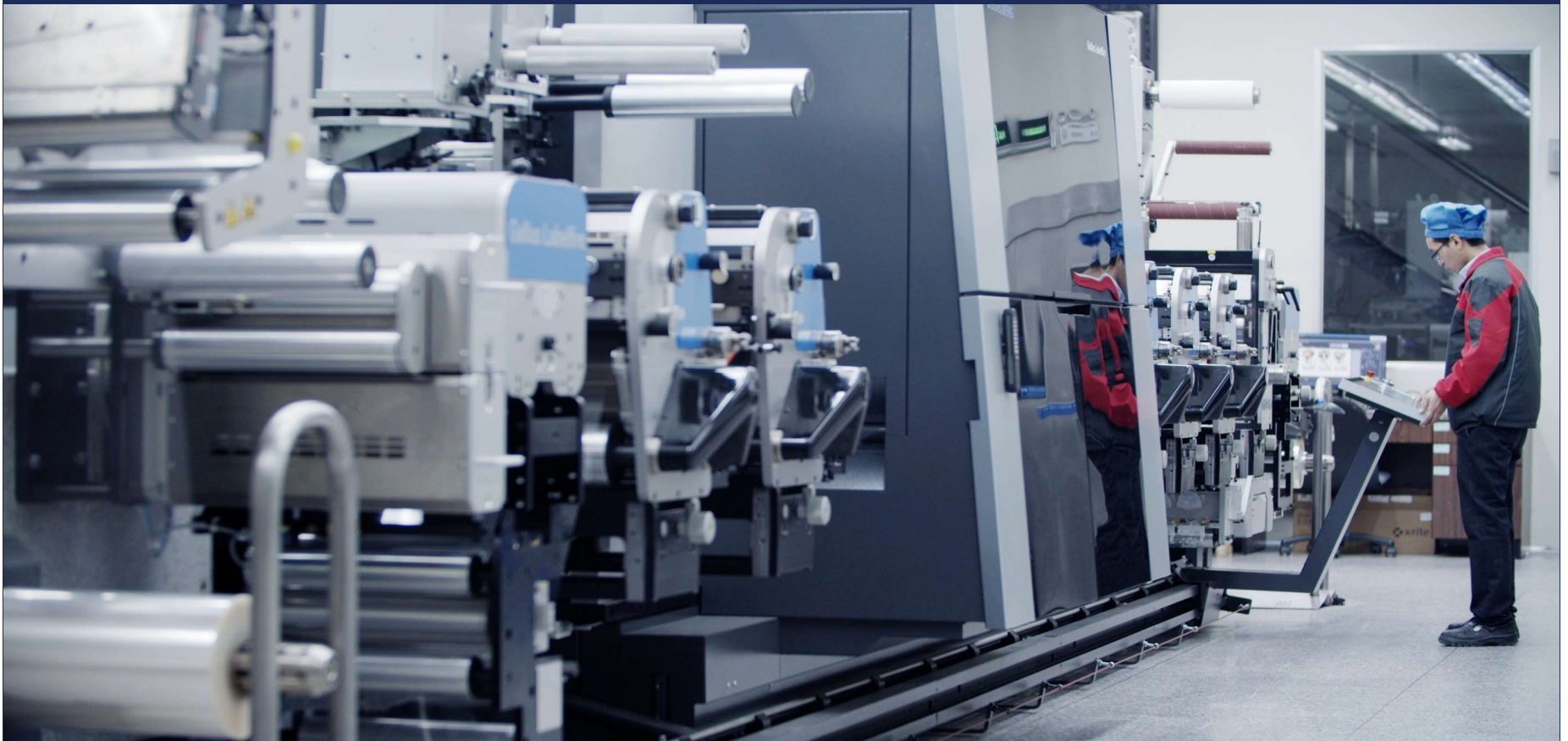
Costs

Costs	\$ -
Subtotal of Costs	\$ -

Net Benefits

Net Benefits	\$ 559,803
Present Value	\$ 313,868

Special Taxing District and Public Schools



Special Taxing District

Special Taxing District Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ -	\$ -	\$ -	\$ -
2	\$ -	\$ -	\$ -	\$ -
3	\$ -	\$ -	\$ -	\$ -
4	\$ -	\$ -	\$ -	\$ -
5	\$ -	\$ -	\$ -	\$ -
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

Special District Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 2,826	\$ -	\$ 2,826	\$ 2,826
2	\$ 2,937	\$ -	\$ 2,937	\$ 5,763
3	\$ 2,934	\$ -	\$ 2,934	\$ 8,697
4	\$ 2,919	\$ -	\$ 2,919	\$ 11,616
5	\$ 2,905	\$ -	\$ 2,905	\$ 14,521
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

Special District Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 2,826	\$ -	\$ 2,826	\$ 2,826
2	\$ 2,937	\$ -	\$ 2,937	\$ 5,763
3	\$ 2,934	\$ -	\$ 2,934	\$ 8,697
4	\$ 2,919	\$ -	\$ 2,919	\$ 11,616
5	\$ 2,905	\$ -	\$ 2,905	\$ 14,521
6	\$ -	\$ -	\$ -	\$ -
7	\$ -	\$ -	\$ -	\$ -
8	\$ -	\$ -	\$ -	\$ -
9	\$ -	\$ -	\$ -	\$ -
10	\$ -	\$ -	\$ -	\$ -

Public Schools

Public Schools Net Benefits of Current Operations

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	-	\$	-	\$	-	\$ -
2	\$	-	\$	-	\$	-	\$ -
3	\$	-	\$	-	\$	-	\$ -
4	\$	-	\$	-	\$	-	\$ -
5	\$	-	\$	-	\$	-	\$ -
6	\$	-	\$	-	\$	-	\$ -
7	\$	-	\$	-	\$	-	\$ -
8	\$	-	\$	-	\$	-	\$ -
9	\$	-	\$	-	\$	-	\$ -
10	\$	-	\$	-	\$	-	\$ -

Public Schools Net Benefits of Expansion

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	6,956	\$	-	\$	6,956	\$ 6,956
2	\$	7,230	\$	-	\$	7,230	\$ 14,186
3	\$	7,222	\$	-	\$	7,222	\$ 21,408
4	\$	7,185	\$	-	\$	7,185	\$ 28,593
5	\$	7,151	\$	-	\$	7,151	\$ 35,744
6	\$	-	\$	-	\$	-	\$ -
7	\$	-	\$	-	\$	-	\$ -
8	\$	-	\$	-	\$	-	\$ -
9	\$	-	\$	-	\$	-	\$ -
10	\$	-	\$	-	\$	-	\$ -

Public Schools Combined Net Benefits

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	6,956	\$	-	\$	6,956	\$ 6,956
2	\$	7,230	\$	-	\$	7,230	\$ 14,186
3	\$	7,222	\$	-	\$	7,222	\$ 21,408
4	\$	7,185	\$	-	\$	7,185	\$ 28,593
5	\$	7,151	\$	-	\$	7,151	\$ 35,744
6	\$	-	\$	-	\$	-	\$ -
7	\$	-	\$	-	\$	-	\$ -
8	\$	-	\$	-	\$	-	\$ -
9	\$	-	\$	-	\$	-	\$ -
10	\$	-	\$	-	\$	-	\$ -

Property Tax Exemptions and Industrial Revenue Bonds



Property Tax Exemptions and Industrial Revenue Bonds

The City and/or the County is considering abating taxes on the Project's property. Below is a table that identifies the types of property that are under consideration for property tax abatement:

Land:	No
Building and Property Improvements:	No
Furniture, Fixtures and Equipment:	No

Property Tax Percentage Exemptions On Land and Building

County	City	Schools	Special Taxing District
0%	0%	0%	0%

Property Tax Percentage Exemptions On Furniture, Fixtures and Equipment

County	City	Schools	Special Taxing District
0%	0%	0%	0%

Value of Exemption Through 10 Years:	\$	-	\$	-	\$	-
*Value of Payment in Lieu of Taxes Through 10 Years:	\$	-	\$	-	\$	-

*The model assumes that the payment in lieu of taxes will be administered to the either the county or city, and the local government will disperse the amounts to the appropriate districts.

Percentage of Gross Receipt Taxes Foregone on Newly Purchased Furniture, Fixtures and Equipment Over 10 Years

Year	State	County	City			
1	0%	0%	0%			
2	0%	0%	0%			
3	0%	0%	0%			
4	0%	0%	0%			
5	0%	0%	0%			
6	0%	0%	0%			
7	0%	0%	0%			
8	0%	0%	0%			
9	0%	0%	0%			
10	0%	0%	0%			
Value of Exemption Through 10 Years:	\$	-	\$	-	\$	-




City of Santa Fe New Mexico Memorandum



DATE: September 19, 2022

TO: Economic Development Advisory Committee
Finance Committee
Quality of Life
Governing Body

FROM: Casey Dalbor, Economic Development Associate 

CC: Rich Brown - Director, Community & Economic Development **RDB**
Andréa Salazar, Assistant City Attorney **AS**

RE: Descartes Labs, Inc. – Termination of the Local Economic Development Act (LEDA)
Project Participation Agreement (PPA) and Funding Clawback
Contract MUNIS #3201914 & MUNIS Project # ED21219K

BACKGROUND:

Descartes Labs, Inc. (Descartes), is a spinoff from Los Alamos National Labs (LANL), a technology development company that creates proprietary software that utilizes satellite imaging and analysis. The software is developed for a cloud-based supercomputing platform to assist with research and development to predict changes in natural resources such as U.S. corn yields and global climate conditions. Their software teaches computers to “see.” Computers can identify objects around the world, such as cornfields and solar farms, with incredible precision by utilizing Descartes’ proprietary technology.

On January 10, 2018, the City Council approved Ordinance 2018-2 to enter into a LEDA Project Participation Agreement to invest public monies in the amount of \$800,000 for Descartes to build a world headquarters, located at 100 North Guadalupe. The public investment included \$700,000 from the state and \$100,000 from the City. This investment would be used for tenant improvements, facility infrastructure, and lease abatement. The public benefit was for Descartes to create 50-70 new high-paying jobs and a minimum capital investment of \$4.2 million within 10 years.

As of January 31, 2020, Descartes was on track to meet its economic development goals and the City reimbursed \$540,000 in LEDA public monies to Descartes. It used a capital investment of \$3.1 million to renovate the 100 North Guadalupe building into a world-class, state-of-the-art corporate headquarters. This building was utilized to attract highly skilled talent to Santa Fe. Descartes had an employee base of 75 with an average annual wage of over \$120,000. Descartes was on track to qualify for bonus monies ahead of the job creation schedule in their project participation agreement. Then, in April of 2020 COVID-19 created an economic crash in magnitude similar to the great recession of 2008. COVID forced Descartes to lay off employees and reduce salaries to prevent closure.

ITEM and ISSUE:

Descartes Labs has submitted a request to terminate their agreement early due to a changing environment, which has forced other business decisions. Descartes Labs has submitted actual data of their total operation from the time of the PPA, spanning a four year time-frame. The State of New Mexico has conducted an analysis based on the same principles as the original analysis, finding that Descartes Labs has generated a net benefit of \$1.47M at the four-year mark for the State of New Mexico and a \$298,000 benefit to the City of Santa Fe.

At the time the parties entered into the PPA the State pledged \$700,000 and the City pledged \$100,000 based on Descartes’ projections. Since that time Descartes has accessed \$490,000 of the State’s monies and \$50,000 from the City’s. Utilizing the data from the analysis of the operations of Descartes during the four year period the following conclusions can be derived:

- Descartes Labs has accessed 70% of the State of New Mexico Funds pledged to this project.
- Descartes Labs has accessed 50% of the City of Santa Fe Funds Pledged
- The State of New Mexico has received 64% of the anticipated benefit from this project
- The City of Santa Fe has received 24% of the anticipated benefit from this project.

The proposed settlement amount of the termination of this agreement is based on the following formula:

$$((\text{Total funds accessed} / \text{Total funds pledged}) \times 100) = A$$

$$100 - ((\text{Total actual impact} / \text{Total anticipated impact}) \times 100) = B$$

$$\text{Total funds received} \times A = C$$

$$C \times B = \text{clawback (funds owed)}$$

State of New Mexico	City of Santa Fe
A = 70%	A = 50%
B = 33%	B = 84%
C = \$343,000	C = \$25,000
\$343,000 X 36% = \$122,378	\$25,000 X 76% = \$18,943

Total Clawback = \$141,321

	Anticipated Net Benefit	Actual Net Benefit	Benefit Received	Benefit Owed	LEDA Pledged	LEDA Received	LEDA Received	Payback Amount
Descartes Labs State	\$ 2,290,370	\$ 1,473,193	64%	35.7%	\$ 700,000	\$ 490,000	70%	\$ 122,378
Descartes Labs City	\$ 1,232,786	\$ 298,692	24%	75.8%	\$ 100,000	\$ 50,000	50%	\$ 18,943
								\$ 141,321

ACTION REQUESTED:

Staff recommends approval of the termination agreement. Once the Governing Body approves the termination agreement the City and State will work with Descartes Labs to collect \$122,378 owed to the State of New Mexico and \$18,943 owed to the City of Santa Fe. Contract MUNIS #3201914 & MUNIS Project # ED21219K

ATTACHMENTS:

- Proposed Termination Agreement
- Enacting Ordinance and Project Participation Agreement with all exhibits
- State Economic Impact Analysis Report
- Affidavit from Descartes Lab

Signature: *Richard Brown*

Email: rdbrown@ci.santa-fe.nm.us

Signature: *Andrea Salazar*
Andrea Salazar (Sep 20, 2022 08:32 MDT)

Email: asalazar@santafenm.gov

Descartes Labs, Inc.

Affidavit

I, Edward M. Urschel, Chief Administrative Officer of Descartes Labs, Inc., a Delaware corporation registered as a foreign profit corporation in the State of New Mexico ("Descartes") make an oath and say that:

1. Descartes maintained a minimum of 25 jobs in New Mexico from February 2021 until December 31, 2021
2. The following provides the number of New Mexico jobs maintained by Descartes since the beginning of 2022:

January 2022	25
February 2022	24
March 2022	24
April 2022	22
May 2022	20

3. The number of New Mexico jobs as of June 15, 2022 was 19 and the current number of New Mexico jobs is 18.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

6/21/2022
Date

Edward M. Urschel
Edward M. Urschel

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

See Attached California Acknowledgment

/Notarized Affidavit

The foregoing instrument was acknowledged before me on this ____ day of _____, 2022, by Edward M. Urschel, the Chief Administrative Officer of Descartes Labs, Inc., a foreign profit corporation, on its behalf.

Notary Public

My commission expires. _____

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Santa Barbara

On 6/21/2022 before me, Lori Cole, Notary Public,
(Here insert name and title of the officer)

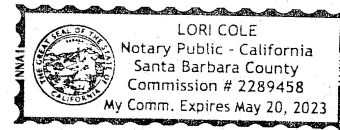
personally appeared Edward M. Lerschel

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
Signature of Notary Public



(Notary Seal)

ADDITIONAL OPTIONAL INFORMATION

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

DESCRIPTION OF THE ATTACHED DOCUMENT

Descartes Labs Inc
(Title or description of attached document)

Att'd doc
(Title or description of attached document continued)

Number of Pages _____ Document Date _____

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
 Corporate Officer

(Title)

- Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

1 CITY OF SANTA FE, NEW MEXICO

2 ORDINANCE NO. 2018-2

3
4
5 AN ORDINANCE

6 RELATING TO THE CITY OF SANTA FE ECONOMIC DEVELOPMENT PLAN
7 ORDINANCE, ARTICLE 11-11 SFCC 1987; APPROVING AND ADOPTING A LOCAL
8 ECONOMIC DEVELOPMENT PROJECT PARTICIPATION AGREEMENT BETWEEN
9 THE CITY OF SANTA FE AND DESCARTES LABS, INC. FOR DESIGN, DEVELOPMENT
10 AND CONSTRUCTION OF TENANT IMPROVEMENTS; AND LEASE PAYMENTS FOR
11 EXPANSION OF A NEW WORLD HEADQUARTERS FACILITY, A LOCAL ECONOMIC
12 DEVELOPMENT PROJECT.

13
14 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

15 Section 1. Short Title. This Ordinance shall be known as the “Descartes Local
16 Economic Development Project Ordinance.”

17 Section 2. Recitals.

18 A. The Local Economic Development Act (“LEDA”), Sections 5-10-1 et. seq. NMSA
19 1978 explicitly permits municipalities to assist qualifying entities with economic development
20 projects through the use of public resources; and

21 B. The City of Santa Fe has complied with the requirements of the Local Economic
22 Development Act by adopting an Economic Development Fund Ordinance (11-14 SFCC (1987)),
23 incorporating within that ordinance its community economic development plan and its economic
24 development strategy for implementation dated May 21, 2008; and

25 C. Descartes, Labs, Inc. (“Qualifying Entity”) is a software development facility that

1 serves the public by stimulating and catalyzing the growth of a high-technology industry cluster in
2 Santa Fe under the Economic Development Ordinance. The Qualifying Entity creates economic base
3 jobs as a software development facility by creating software for cloud-based super-computing
4 platforms that predicts changes in natural resources to better understand the planet.

5 D. The State of New Mexico has appropriated \$700,000 from the New Mexico LEDA
6 Fund and the City of Santa Fe has provided \$100,000 from the Local Economic Development Fund to
7 the project to build out the infrastructure and tenant improvements in the facility, and to contribute to
8 lease payments with any remainder from the infrastructure and tenant improvement expenses. The
9 facility is located at 100 North Guadalupe Street in Santa Fe, New Mexico and will include
10 construction costs, and materials associated with the interior renovation of its facilities and to improve
11 or construct HVAC, telecommunications, broad band connectivity and other infrastructure necessary
12 to improve service to the facility. This project identified as the “Project” is a world headquarters
13 which will expand the tax base and generate more taxes, fees and other revenues for the State of New
14 Mexico and City of Santa Fe.

15 E. The new facility will be used to develop software which is defined as a
16 “manufacturer” pursuant to LEDA.

17 **Section 3. Findings.** The governing body hereby finds:

18 A. The City of Santa Fe has determined that it is in the interest of the welfare of the
19 citizens of Santa Fe to enter into an Economic Development Project Participation Agreement for the
20 purposes of effectuating the city’s Economic Development Plan and the Project.

21 B. In compliance with the City’s Economic Development Fund Ordinance, 11-14 SFCC
22 (1987), this Project Participation Agreement between Qualifying Entity and the City clearly states the
23 following:

- 24 (1) Descartes Labs, Inc. is a qualifying entity;
- 25 (2) The contributions of the City and Qualifying Entity;

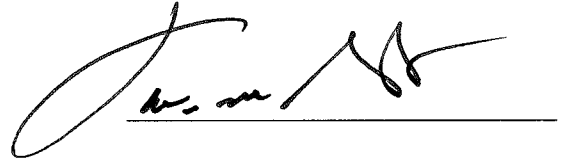
- 1 (3) The specific measurable objectives upon which the performance review will
2 be based;
- 3 (4) A schedule for Project development and goal attainment;
- 4 (5) The security being offered for the City's investment;
- 5 (6) The procedures by which the Project may be terminated and the City's
6 investment recovered;
- 7 (7) The time period for which the City shall retain an interest in the Project; and
- 8 (8) The economic development goals of the project; and
- 9 (9) A "sunset" clause after which the City shall relinquish interest in and
10 oversight of the project.

11 **Section 4. Approval and Adoption of the Project Participation Agreement.** The
12 governing body hereby approves the 2018 PPA (attached as Exhibit A) whereby the City will be the
13 Fiscal Agent for the State Legislative appropriation of \$700,000 and for the \$100,000 in City Funds.
14 The City will disburse the State Legislative appropriation of \$700,000 and the City funds of \$100,000
15 to the Qualifying Entity and the funds will be used for construction of tenant improvements and
16 infrastructure in and to the facility and for lease payments with any remainder from the infrastructure
17 and tenant improvement expenses and thus will expand the tax base and generate more taxes, fees and
18 other revenues for the State of New Mexico and City of Santa Fe.

19 **Section 5. Severability Clause.** If any section, paragraph, clause, or provision of this
20 ordinance, or any section, paragraph, clause, or provision of any regulation promulgated hereunder
21 shall for any reason be held to be invalid, unlawful, or unenforceable, the invalidity, illegality, or
22 unenforceability of such section, paragraph, clause, or provision shall not affect the validity of the
23 remaining portions of this ordinance or the regulation so challenged.

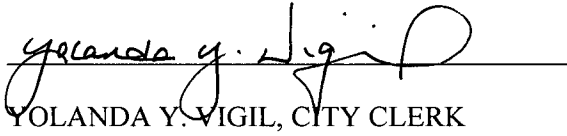
24 **Section 6. Effective Date.** This ordinance shall become effective immediately upon
25 adoption.

1 PASSED, APPROVED and ADOPTED this 10th day of January, 2018.

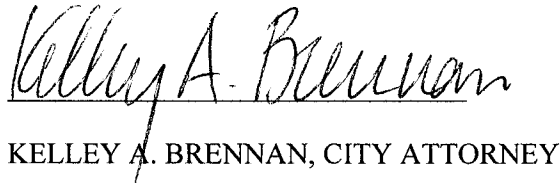
2
3
4 

5 JAVIER M. GONZALES, MAYOR

6 ATTEST:

7
8 
9 YOLANDA Y. VIGIL, CITY CLERK

10 APPROVED AS TO FORM:

11 
12
13 KELLEY A. BRENNAN, CITY ATTORNEY

14
15
16
17
18
19
20
21
22
23
24
25 *M/Legislation/Ordinances 2018/2018-2 Descartes Labs PPA*

**CITY OF SANTA FE
ECONOMIC DEVELOPMENT
PROJECT PARTICIPATION AGREEMENT**

THIS PROJECT PARTICIPATION AGREEMENT ("Agreement") is made and entered into this 10th day of January, 2018, by and between the City of Santa Fe, a municipal corporation (hereinafter referred to as the "City") and Descartes Labs, Inc. a Delaware Corporation registered as a foreign profit corporation in the State of New Mexico (hereinafter referred to as the "Qualifying Entity", "Q/E", or "Descartes").

WHEREAS, the State of New Mexico has deemed it in the best interest of the citizens of New Mexico to enact the Local Economic Development Act (LEDA) (N.M. Stat. Ann. 5-10-1 *et seq.* (1978));

WHEREAS, LEDA explicitly permits municipalities to assist qualifying entities with economic development projects through the use of public resources;

WHEREAS, the City has complied with LEDA requirements by adopting an economic development plan ordinance incorporating within that ordinance its community economic development plan (11-11 SFCC (1987)), called the Community Economic Development Plan and Economic Development Strategy for Implementation dated May 21, 2008;

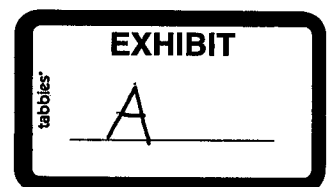
WHEREAS, Descartes Labs, Inc. is a "qualifying entity" under LEDA and the Economic Development Ordinance in that it is a software developer which is a "manufacturer" of products that creates economic base jobs. § 11-11.4 (A) SFCC (1987); NMSA 1978, § 5-10-3 (I);

WHEREAS, all requirements under the Economic Development Ordinance to enter into this Agreement have been fulfilled;

WHEREAS, the Q/E has submitted an application ("Application") to the City for assistance under the Economic Development Plan Ordinance (11-11 SFCC (1987)) and for the City to act as fiscal agent for the grant monies ("Grant Monies") granted by the City through its Office of Economic Development and through the New Mexico Economic Development Department;

WHEREAS, in the Application, the Q/E proposed an "economic development project" compliant with LEDA, in that it will use the Grant Monies for lease payments, construction costs and materials associated with the interior renovation of its facilities and to improve or construct infrastructure, including HVAC, telecommunications, broadband connectivity, and other infrastructure necessary to provide or improve service to the facility (the "Project") located at 100 North Guadalupe, Santa Fe, New Mexico, 87501;

WHEREAS, the City has determined that it is in the interest of the welfare of the citizens of the City to enter into this Agreement for the purposes of effectuating its economic development plan;



WHEREAS, the City's total maximum contribution of Grant Monies to the Project is One Hundred Thousand Dollars (\$100,000); the State of New Mexico's maximum contribution to the Project will not exceed Seven Hundred Thousand Dollars (\$700,000) from the New Mexico LEDA Fund ("NM LEDA Fund") pursuant to an intergovernmental agreement between the City and the State to be executed soon after the execution of this Agreement; and the Q/E shall contribute up to Four Million Two Hundred Nine Thousand Dollars (\$4,209,000) to the Project; and

WHEREAS, the Q/E will spend up to Two Million Dollars (\$2,000,000) in tenant improvements by approximately June 30, 2019;

WHEREAS, the Project addresses the following objectives from the Santa Fe Economic Development Implementation Strategy as adopted by City Resolution 2008-42: "Diversify the Santa Fe Economy with an emphasis on high wage jobs and career paths;" "Pursue overall affordability where local wages can support living in Santa Fe (reduce leakage);" and "Bolster Santa Fe's leadership position and/or potential in innovation."

WHEREAS, this Agreement clearly provides the following as required by LEDA and the Economic Development Plan Ordinance: (1) the economic development goals of the Project; (2) the contributions of the City, State and the Q/E; (3) the specific measurable objectives upon which the performance review will be based; (4) a schedule for project development and goal attainment; (5) the security being offered for the City's and State's investment; (6) the procedures by which the project may be terminated and the City's investment recovered; (7) the time period for which the City shall retain an interest in the Project; (8) a "sunset" clause after which the City shall relinquish interest in and oversight of the Project; and (9) that the Qualifying Entity is a qualifying entity.

NOW THEREFORE, in consideration of the foregoing, the following and other good and valuable consideration, the receipt of which is hereby acknowledged the undersigned parties hereby agree as follows.

1. **CONTRIBUTIONS OF THE CITY, THE STATE AND THE Q/E**

A. Contributions of the State and the City. The maximum Grant Monies that may be disbursed under this Agreement shall be \$800,000 as described below:

(1) City Contribution. This Agreement governs the City's contribution to the Project. The City shall reimburse the Q/E in the amount of up to One Hundred Thousand Dollars (\$100,000) for lease payments, infrastructure to improve the interior of the building and site, design, development, installation of infrastructure, and construction of tenant improvements to the facility.

(2) State Contribution: This Agreement governs the State's contribution of up to Seven Hundred Thousand Dollars (\$700,000) from the NM LEDA Fund by way of the New Mexico Economic Development Department. The City will serve as fiscal agent pursuant to the

Intergovernmental Agreement between the City and State, which is in substantial form as **Attachment “E”**, the terms of which are incorporated into this Agreement. The State monies will be available for reimbursement tranches upon completion of the disbursement milestones as identified in **Attachment F**.

The State’s contribution may include a performance bonus as set forth more thoroughly in **Attachment A**.

(3) Disbursement of Grant Monies: Dispersal of the NM LEDA Funds by the State and the City’s economic development funds are contingent upon the following:

(a) The City and the New Mexico Economic Development Department shall execute an intergovernmental agreement for the State to grant up to \$700,000 to the City as fiscal agent for the Project; and

(b) The Q/E shall submit to the City for review, a cover letter, invoice, proof of payment, and supporting documentation of the completion of Phase I and II as described Attachment B and as necessary for reimbursement as referenced in the Job Creation Commitment and Schedule in Attachment A. Disbursement shall be made on a reimbursement basis of eligible costs under the LEDA, as further limited below:

- (i) Lease Payments; and
- (ii) Design, development, and construction of building, infrastructure and tenant improvements to the building and site.

It is expressly understood that any costs eligible for reimbursement must be incurred after this Agreement is in effect.

(c) The City shall reimburse to the Q/E up to One Hundred Thousand Dollars (\$100,000) in City Grant Monies. The City monies will be available for disbursement in the tranches as identified in Attachment F.

(4) If Grant Monies from the City and State do not fully fund the Project; the Q/E shall contribute any additional funds necessary to fund the remainder of the Project.

B. Contributions of the Q/E.

(1) Financial Investment: The Q/E shall contribute up to Four Million Two Hundred Nine Thousand Dollars (\$4,209,000) or more in matching funds to complete the Project.

(2) Project Management: Unless otherwise specified in this Agreement, the Q/E shall be responsible for managing all parts of the Project.

(3) Direct Economic Output: The Project is anticipated to generate \$106,147,218 in direct salaries for existing and expanded operations over ten years. The total estimated direct economic output for the expansion of the facility is \$96,624,751 over ten years, as is further

described in the Economic Impact Report. (See p. 4 of **Attachment “C”**.)

(4) Expanded Tax Base: As a result of the completion of the Project, the Q/E is expected to generate contributions to the City's tax base, as projected in the Economic Impact Report. Net benefits for the City generated by this Project (including property taxes, gross receipts taxes, utility fees, utility franchise fees, lodger's taxes, and other use taxes) are estimated to be \$651,983 over ten years. (See p. 10 of Attachment “C”.)

(5) Proportional Investment: The Q/E at its discretion may decide to not accept the entire \$800,000 in Grant Monies for the Project. If the Q/E does not accept the entire Grant Monies, then the capital investment and job creation requirements would then decrease proportionally to the level of Grant Monies accepted. The Q/E shall notify the City 30 days prior to its decision.

2. PERFORMANCE REVIEW AND CRITERIA – ECONOMIC DEVELOPMENT GOALS

A. Economic Development Goals. The following Economic Development Goals shall be fulfilled by the Q/E:

(1) By June 30, 2019, the Q/E shall employ at least thirty-six (36) new employees in the City of Santa Fe, while retaining the prior employment, and in accordance with the minimum average annual salary as described in the Job Creation Commitment and Schedule. See **Attachment “A”**.

(2) By June 30, 2022, the Q/E shall employ no fewer than fifty (50) new employees in the City of Santa Fe, while retaining the prior employment figures, in accordance with the minimum average wage data points in Attachment A.

(3) If the Q/E employs more than 50 new jobs and retains the baseline 20 jobs according to Attachment A, then the Q/E shall be entitled to a bonus of Ten Thousand Dollars (\$10,000) per each bonus-tier job retained for at least 6 months by June 30, 2022, for up to 20 jobs for maximum amount of Two Hundred Thousand Dollars (\$200,000), in accordance with Attachment A and F.

(4) The Q/E's contribution as set forth in Paragraph 1.B herein is incorporated into the Economic and Development Goals.

B. Reports; Certifications; Review.

(1) Quarterly Reports. During the term of this Agreement, the Q/E shall provide to the Office of Economic Development staff quarterly reports in the months of January, April, July, and October of each year. The Q/E's quarterly reports shall clearly indicate how the Q/E has met the job creation prerequisites in **Attachment A** (see Attachment D for recommended form) Quarterly reports shall be in the form of an affidavit signed by an officer of the Q/E. Quarterly reports shall include a copy of FORM ES-903a, or an equivalent document as required by the New Mexico Department of workforce Solutions, provided by the Q/E to the

City to demonstrate compliance with this Agreement at each review cycle. In the quarterly report, the Q/E shall include number of new jobs created and filed that quarter, the average minimum annual salary of the new jobs, the total number of jobs, total payroll, and the amount of the Q/E's total capital investment, with line items of building improvements and lease payments, to date. The first quarterly report shall certify the number of baseline jobs as of June 30, 2017.

(2) Annual Reports. The City may require the Q/E to provide annual reports or a presentation to the City's governing body and the Economic Development Advisory Committee (EDAC). The City will give the Q/E a minimum of 30 days' notice if a report or presentation to the governing body or EDAC is required. City staff shall review these reports to ensure the Q/E's compliance with this Agreement in accordance with the Job Creation Commitment and Schedule.

(3) Expanded Tax Base Report: Within a reasonable time after completion of the construction of the facilities, but in any event by the next quarterly report, the Q/E shall provide to the City a written report on the construction jobs and wages created by the construction portion of the project..

(4) Certification of Non-Interest. The Q/E shall certify to the City that to the Q/E's best information, knowledge and belief and after reasonable inquiry, no member, officer, or employee of the City or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one year thereafter, has any interest, direct or indirect, in the Q/E or any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The Q/E shall certify that such a provision shall be included in all contracts and subcontracts in connection with the Project.

D. Documentation of Completion of Construction Phases: Within a reasonable time after completion of each phase listed in the Construction Schedule of Attachment "B", the Q/E shall provide documentation of its completion to the City's Office of Economic Development. The Q/E shall provide documentation to the City that construction of the facilities was completed by June 30, 2018. See Construction Schedule, attached as **Attachment "B"**.

3. RECAPTURE PROVISIONS FOR PUBLIC MONIES

A. If any Economic Development Goal set forth in Paragraph 2.A is not met and documented in a manner deemed satisfactory by the City, the Q/E shall be deemed in default ("Default") and within 60 days of the City receiving the quarterly report with the information of such Default, the City shall send a written Notice of Default to the Q/E informing the Q/E how many days it has to cure the Default or repay the Grant Monies disbursed in proportion to the Economic Development Goals not yet achieved.

B. If the Q/E remains noncompliant after any applicable cure period, then the City may elect to pursue any and all remedies available in law or equity, including but not limited to initiating

foreclosure of the security interest or demanding timely repayment by the Q/E of the Grant Monies in proportion to the unmet goals, as the City in its sole discretion may determine subject to reasonable calculations

C. In the event the Q/E ceases operations and closes its facility before the end of year three of this Agreement, the Q/E shall be deemed in Default and the Q/E shall reimburse 100% of all Grant Monies disbursed to the Q/E to the City of Santa Fe Economic Development Fund as identified in 11-14 SFCC (1987).

4. Q/E BUYOUT

A. The Q/E may, at its election, buyout and thereby terminate this Agreement by repaying in full to the City all Grant Monies. Such repayment by the Q/E shall be without penalty until and unless the City initiates claw back of the Grant Monies, at which point costs, expenses (including City staff time) and attorney's fees will accrue to the repayment amount. The City shall not initiate such a claw back during the period from the time the Q/E sends the notice described in Section 4(c) until the time that the repayment contemplated by the notice is not made in accordance with the notice.

B. The Q/E must send prior written notice to the City of the Q/E's intent to repay in full the Grant Monies at least 45 days prior to the Q/E's repayment. The City's receipt of the Q/E's repayment of all disbursed Grant Monies (including any costs, fees and expenses resulting from claw back proceedings) constitutes satisfaction of the Q/E under this Agreement, upon which the Q/E may request release of the security interest, and the City will release the security interest within a reasonable time after receiving the Q/E's written request.

C. Within 30 days of receiving such notice from the Q/E, the City will notify the New Mexico Economic Development Department of the Q/E's intent to exercise the buyout clause. The City will reimburse the New Mexico Economic Development Department its portion of the repaid Grant Monies within 60 days after the City receives the repaid monies from the buyout.

5. SECURITY FOR CITY'S INVESTMENT; CLAWBACK

A. This is a grant project only, with the City acting as fiscal agent. The Q/E has no loan obligations for repayment to the City or State, but is obligated to fulfill the Economic Development Goals of this Agreement; however if the Q/E is found by the City to be in Default, then the City may elect to demand financial reimbursement by the Q/E.

B. The Grant Monies must be secured in a manner that it may be clawed back if the Q/E fails to meet its performance goals under this PPA. As security for fulfilling the Economic Development Goals, before the City may disburse any appropriations to the Q/E, the amount of Public Monies to be reimbursed shall be securitized in a manner satisfactory to the City.

C. Acceptable securitization methods include, without limitation, an irrevocable stand-by letter of credit from an issuing financial institution, with the City as beneficiary, from which the City may immediately draw down upon the City's presentation of a demand for payment and

evidence of Q/E's Default ("Irrevocable Letter of Credit"). If secured by this method, then the Irrevocable Letter of Credit shall have a term that extends to the term of this Agreement (either via the full duration in the base term or via automatic one-year extensions terminable at the sole option and discretion of the City). At any given time, the Irrevocable Letter of Credit must secure an amount, and the City shall be able to draw down an amount, at least equal to the amount of appropriations subject to clawback made to the Q/E for the Project, the maximum being \$800,000. Funds from the Irrevocable Letter of Credit may be drawn in one drawing or from time-to-time in one or more partial drawings on or before the expiration date. Attached hereto and incorporated herein is **Attachment A**, which sets forth the clawback terms and the Q/E's offered draft security in substantial form.

D. During the term of this Agreement, the Q/E may request a full or partial release of the security interest with the substitution of collateral, repayment of the disbursed appropriation, or proof that the Q/E has met the Economic Development Goals, in part or in whole, under this Agreement. Any full or partial release of the security interest will be proportional to the value of the substitute collateral, repayment, or the portion of Economic Development Goals met which are no longer subject to clawback and according to Attachment A.

E. Acceptance of a method of securitization and of substitute collateral or proof of performance goals shall be within the City's sole and absolute discretion.

6. TERM; SUNSET

This Agreement shall remain in force for 10 years from the execution date of the Agreement, or until conditions of the Agreement are performed in full or to the reasonable satisfaction of the City, whichever is earlier. In the event the Q/E performs or exceeds the required performance levels contained in this Agreement, as may be reasonably determined by the City, this Agreement may be terminated at that time in writing by the City pursuant to Paragraph 7, below.

This Agreement will not be deemed terminated and this Agreement will remain in effect unless and until the City reasonably determines that the objectives under this Agreement have been fulfilled, in which case the City will provide a closure letter to the Q/E.

7. TERMINATION

This Agreement may be terminated by the City upon written notice delivered to the Q/E at least 45 days prior to the intended date of termination in the event that the Q/E ceases to operate the Project in accordance with the terms of this Agreement. If the Q/E is found to not be in substantial compliance with the Agreement, the City reserves the right to terminate the Agreement and recall in full the Grant Monies.

The Q/E may terminate the Agreement by pre-paying in full to the City and without penalty any Grant Monies disbursed to the Q/E. The Q/E must send a written letter to the City giving notice of its intent to pre-pay the Grant Monies in full within 45 days prior to the Q/E's intent to repay in full the Grant Monies.

8. **STATUS OF THE Q/E**

The Q/E, and its agents and employees are not employees of the City. The Q/E, and its agents and employees, shall not accrue leave, retirement, insurance, bonding, use of City vehicles or any other benefits afforded to employees of the City as a result of this Agreement. The Q/E shall be solely responsible for payment of wages, salaries, and benefits to any and all employees or subcontractors retained by Contractor in the performance of the services under this Agreement.

9. **ASSIGNMENT AND SUCCESSORS; BINDING EFFECT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors in interest by way of merger, acquisition, or otherwise and their permitted assigns.

10. **INDEMNIFICATION; LIABILITY**

It is expressly understood and agreed by and between the Q/E and the City that the Q/E shall defend, indemnify, and hold harmless the City for all losses, damages, claims or judgments on account of any suit, judgment, execution, claims, actions, or demands whatsoever resulting from the Q/E's actions or inactions as a result of this Agreement, as well as the actions or inactions of Q/E's employees, agents, representatives and subcontractors as a result of this agreement. The Q/E shall maintain adequate insurance in at least the aggregate maximum amounts which the City could be liable consistent with the provisions of the New Mexico Tort Claims Act. It is the sole responsibility of the Q/E to be in compliance with the law.

11. **INSURANCE**

A. The Q/E, at its own cost and expense, shall carry and maintain in full force and effect during the term of this Agreement, comprehensive general liability insurance covering bodily injury and property damage liability with respect to the Project, in a form and with an insurance company reasonably acceptable to the City, with limits of coverage in the maximum amount which the City could be held liable under the New Mexico Tort Claims Act for each person injured and for each accident resulting in damage to property. Such insurance shall provide that the City is named as an additional insured and that the City shall be notified no less than 30 days in advance of cancellation for any reason. The Q/E shall furnish the City with a copy of a "Certificate of Insurance" with respect to such coverage as a condition prior to performing under this Agreement.

B. The Q/E shall also obtain and maintain Workers' Compensation insurance, required by law, to provide coverage for Q/E's employees throughout the term of this Agreement. The Q/E shall provide the City with evidence of its compliance with such requirement.

12. **NEW MEXICO TORT CLAIMS ACT**

Any liability incurred by the City of Santa Fe in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, *et seq.* NMSA 1978, as amended. The City and its “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

13. **THIRD PARTY BENEFICIARIES**

By entering into this Agreement, the parties do not intend to create any right, title, or interest in or for the benefit of any person other than the City and the Q/E. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

14. **RECORDS AND AUDITS**

The Q/E shall maintain and keep in its possession throughout the term of this Agreement and for a period of six years thereafter, all related records, including but not limited to, all financial records, requests for proposals (RFPs), 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 hereunder, the purpose for which such funds were used, and other such records as the City or the State shall proscribe. The Q/E shall be strictly liable for receipts and disbursements related to the Project Grant Monies. These records shall be subject to inspection by the City, the New Mexico Economic Development Department, and the State Auditor upon notice within five business days. The City shall have the right to audit billings both before and after payment; payments under this Agreement shall not foreclose the right of the City to recover excessive illegal payments.

15. **APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the City Governing Body and the New Mexico Economic Development Department on behalf of the Q/E to the City for the performance of this Agreement. If sufficient appropriations and authorization are not made by the City Governing Body and the New Mexico Economic Development Department on behalf of the Q/E to the City, this Agreement shall terminate upon written notice being given by the City to the Q/E.

16. **RELEASE**

The Q/E, upon final fulfillment by the City of its obligations under this Agreement, releases the City, its officers and employees, from all liabilities, claims, and obligations whatsoever arising from or under this Agreement. The Q/E agrees not to purport to bind the City to any obligation not assumed herein by the City unless the Q/E has express written authority to do so, and then only within the strict limits of that authority.

17. **CONFIDENTIALITY**

Any confidential information provided to or developed by the Q/E in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Q/E without the prior written approval of the City.

18. **APPLICABLE LAW; CHOICE OF LAW; VENUE**

The Q/E shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the City of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the Q/E agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

19. **AMENDMENT**

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

20. **SCOPE OF AGREEMENT**

This Agreement incorporates all the agreements, covenants, and understanding between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. This Agreement expresses the entire Agreement and understanding between the parties with respect to said performance. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in the Agreement.

21. **REPRESENTATIONS AND WARRANTIES**

A. The Q/E hereby warrants the Q/E is and will remain in compliance with the Americans with Disabilities Act of 1990 (the "ADA") and the regulations promulgated thereunder, 29 CFR 1630. The Q/E hereby agrees to defend, indemnify and hold harmless the City from and against all claims, suits, damages, costs, losses and expenses in any manner arising out of or connected with the failure of the Q/E, its contractors and subcontractors, agents, successors, assigns, officers or employees to comply with provisions of the ADA or the rules and regulations promulgated thereunder.

B. The Q/E agrees to comply with the applicable provisions of local, state and federal equal employment opportunity statutes and regulations.

C. The Q/E shall comply with City of Santa Fe Minimum Wage, Article 28-1-SFCC 1987, as well as any subsequent changes to such article throughout the term of this Agreement.

22. **APPLICABLE LAW**

This Agreement shall be governed by the ordinances of the City of Santa Fe and the laws of the State of New Mexico.

23. **NON-DISCRIMINATION**

During the term of this Agreement, the Q/E shall not discriminate against any employee or applicant for an employment position to be used in the performance by the Q/E hereunder, on the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

24. **SEVERABILITY**

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

25. **NOTICES**

Any notices required to be given under this Agreement shall be in writing and served by personal delivery or by mail, postage prepaid, to the parties at the following addresses:

If to the CITY OF SANTA FE:
City of Santa Fe
Attn: Director of Office of Economic Development
P.O. Box 909
Santa Fe, NM 87504

If to QUALIFYING ENTITY:
Attn: Chief Executive Officer
Descartes Labs, Inc.
100 North Guadalupe Street
Santa Fe, NM 87501

26. **HEADINGS**

The section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

27. **ATTACHMENTS**

All attachments are fully incorporated herein and made a part of this Agreement.

28. COUNTERPARTS

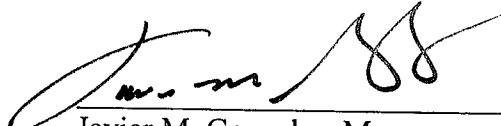
This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

29. REPRESENTATION ON AUTHORITY OF SIGNATORIES

The signatory for the Q/E represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. The Q/E represents and warrants that the execution and delivery of the Agreement and the performance of the Q/E's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

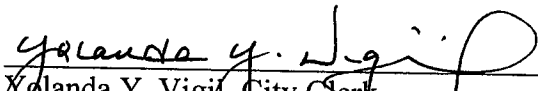
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF SANTA FE:



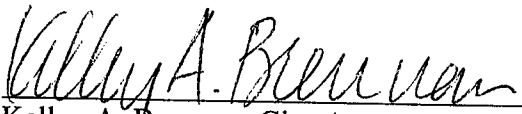
Javier M. Gonzales, Mayor

ATTEST:



Yolanda Y. Vigil, City Clerk
cc mtg. 11/10/18

APPROVED AS TO FORM:



Kelley A. Brennan, City Attorney

Attachment A

Job Creation Commitment and Schedule (Net New Jobs)* ❖

<u>Year</u>	<u>Net New Jobs Hiring Target</u>	<u>Jobs Retained From Prior Years</u>	<u>Payroll</u>	<u>Job Determination Period</u>		<u>Clawback % on Job Creation Shortfall^{^^^}</u>
1	20 + 19 = 39	20 (starting headcount)	\$2.66 million	01-Jul 2017	30 Jun 2018	100%
2	39 + 17=56	39	\$5.04 million	01 Jul 2018	30 Jun 2019	100%
3	56 + 14 = 70	56	\$7.0 million	01 Jul 2019	06 Jun 2020	100%
4	-	70		01 Jul 2020	30 Jun 2021	75%
5	-			01 Jul 2021	30 Jun 2022	50%
Note	71-90 (Bonus)			-	01 Jan 2022	
Total	50		\$14.7 million			
Add'l Notes: All 70 new jobs and the 20 baseline jobs must be retained until June 30, 2022 for compliance. Any bonus tier job shall be achieved prior to June 30, 2022, and must be retained for six months for the bonus.						

<i>Starting Headcount (JTIP Eligible):</i>	20	<i>As of:</i>	June 30, 2017
--	----	---------------	---------------

^{^^^} Clawback percentage is calculated on job creation shortfall at expiration or termination of the PPA, whichever is earlier. Clawback formula = (Job Creation % Shortfall) x (Cumulative Grant Monies Distributed), where Job Creation % Shortfall is $(1 - (\text{actual jobs} / \text{cumulative hiring target})) * 100\%$.

❖ Each job must have a minimum average salary of \$140,000, not including additional benefits. Wages of jobs retained from prior years must equal to or exceed the wage requirements for those jobs as described herein.

Attachment B
Descartes Labs, Inc.
Construction Schedule

<u>Estimated Completion Date</u>	<u>Description</u>
March 31, 2018	Phase I: Tenant Improvements - Start of Construction.
June 30, 2018	Phase II: Tenant Improvements – Receipt of Certificate of Occupancy, after completing upgrades to design, building, interior, office and workspace upgrades, and installation of infrastructure to building facility which may include, HVAC, broadband connectivity, utilities, security, electrical, and any infrastructure necessary for operations.

ATTACHMENT C

EXECUTIVE SUMMARY

A REPORT OF THE ECONOMIC IMPACT OF
DESCARTES LABS IN SANTA FE, NM

October 12, 2017

Prepared by:
Ryan Eustice
New Mexico Economic Development Department
Joseph Montoya Building
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505



Prepared using Total Impact



PURPOSE & LIMITATIONS

This report presents the results of an analysis undertaken by the New Mexico Economic Development Department using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model is a customized software program licensed to the New Mexico Economic Development Department. The model includes estimates, assumptions, and other information developed by Impact DataSource from its independent research effort detailed in New Mexico Economic Development Department's Total Impact User Guide.

The analysis relies on prospective estimates of business activity that may not be realized. New Mexico Economic Development Department made reasonable efforts to ensure that the project-specific data entered into the Total Impact model reflects realistic estimates of future activity.

No warranty or representation is made by New Mexico Economic Development Department or Impact DataSource that any of the estimates or results contained in this study will actually be achieved.



CONTENTS

Economic Impact

- Introduction..... 4
- Description of the Project..... 4
- Existing & Expanded Operations..... 4
- Economic Impact Overview..... 5
- Temporary Construction Impact..... 7

Fiscal Impact

- Fiscal Impact Overview..... 8
 - State of New Mexico..... 9
 - Santa Fe..... 10
 - Santa Fe County..... 11
 - Santa Fe Public Schools..... 11
 - Other Taxing Districts..... 12

Public Support

- City Non-Tax Incentives..... 13

Methodology

- Overview of Methodology 17
- About Impact DataSource..... 19

Introduction

This report presents the results of an economic impact analysis performed using Total Impact, a model developed by Impact DataSource. The report estimates the impact that a potential project in the Santa Fe may have on the state and local economy and estimates the costs and benefits for the state and local taxing districts over a 10-year period.

Description of the Project

Descartes Labs is a fast-growing startup that will be headquartered in Santa Fe, New Mexico. The company is a spinoff that came out of the Los Alamos National Laboratory. Now, Descartes Labs, has over 40 employees and has just recently raised a significant amount of series B financing. Descartes Labs will be entering into a lease for a downtown building in Santa Fe, New Mexico. The expansion will be able to house an additional 70 employees. The idea behind the new headquarters is to have the kind of space where someone says "wow" when they walk in the door and will show incoming recruits that we've built a little piece of Silicon Valley here in Santa Fe, New Mexico. The headquarter offices will include 15,845 rentable square feet, 17,680 square feet if including common spaces, plus 4,197 square feet of basement storage. The neighborhood this space is located in is extremely attractive to our employees. It is walking and biking distance to the center square of downtown Santa Fe, the Railyard and across the street from hotels, restaurants and museums. It is also walking distance to many of our employee's homes, while also being across the street from the Riverwalk and dog friendly areas for our employees who bring their dogs to work. The acquisition and completion of our headquarters in Santa Fe, New Mexico will allow Descartes Labs to expand at a rapid pace, and recruit high-paid talent to New Mexico. With a great place to work, in a great location, we expect potential employees to be more likely to move to Santa Fe, New Mexico from various places around the country and the world.

Existing & Expanded Operations

The Project under analysis represents the expansion of an existing company in the Santa Fe. The existing operations currently support 20.0 direct jobs in the community and 15.3 indirect and induced jobs. The direct workers earn \$140,000 per year and the company supports \$10.2 million per year in taxable sales and spending in the community. Additionally, the company supports taxable property valued at \$0.0 million annually. The table below illustrates the company's economic impact over the next 10 years - including both the existing and expanded operations.

Table 1. Economic Impact of Existing and Expanded Operations Over the Next 10 Years

	Existing Operations	Expansion	Existing & Expanded Ops
Economic Output:			
Direct	\$29,455,350	\$67,169,401	\$96,624,751
Indirect & Induced	\$19,036,993	\$43,411,584	\$62,448,577
Total	\$48,492,342	\$110,580,985	\$159,073,328
Jobs			
Direct	20.0	50.0	70.0
Indirect & Induced	15.3	38.3	53.6
Total	35.3	88.3	123.6
Salaries			
Direct	\$30,659,218	\$75,488,000	\$106,147,218
Indirect & Induced	\$15,357,202	\$37,811,939	\$53,169,141
Total	\$46,016,420	\$113,299,939	\$159,316,359
Taxable Sales			
Direct	\$100,295,246	\$15,946,989	\$116,242,235
Indirect & Induced	\$2,076,358	\$5,112,333	\$7,188,692
Total	\$102,371,604	\$21,059,322	\$123,430,927

The table below illustrates the company's fiscal impact - the net benefits for local taxing districts - over the next 10 years - including both the existing and expanded operations.

Table 2. Fiscal Impact of Existing and Expanded Operations Over the Next 10 Years

	Net Benefits		
	Existing Operations	Expansion	Existing & Expanded Ops
State of New Mexico	\$8,740,948	\$12,222,317	\$20,963,264
Santa Fe	\$4,410,752	\$651,983	\$5,062,736
Santa Fe County	\$1,871,462	\$341,917	\$2,213,379
Santa Fe Public Schools	\$0	\$198,218	\$198,218
Special Taxing Districts	\$0	\$33,764	\$33,764
Total	\$15,023,162	\$13,448,199	\$28,471,361

The remainder of this report will focus on only the economic and fiscal impact associated with the expanded operations.

Economic Impact Overview

The Project's operations will support employment and other economic impacts in the state. The 50.0 workers directly employed by the Project will earn approximately \$140,000 per year initially. This direct activity will support 38.3 indirect and induced workers in the state earning \$91,000 on average. The total additional payroll or workers' earnings associated with the Project is estimated to be approximately \$113.3 million over the next 10 years.

Accounting for various taxable sales and purchases, including activity associated with the Project, worker spending, and visitors' spending in the state, the Project is estimated to support approximately \$21.1 million in taxable sales over the next 10 years.

Table 3. Economic Impact Over the Next 10 Years Statewide

	Direct	Indirect & Induced	Total
Economic output generated by direct, indirect, and induced activity	\$67,169,401	\$43,411,584	\$110,580,985
Number of permanent direct, indirect, and induced jobs to be created	50.0	38.3	88.3
Salaries to be paid to direct, indirect, and induced workers	\$75,488,000	\$37,811,939	\$113,299,939
Taxable sales and purchases	\$15,946,989	\$5,112,333	\$21,059,322

The project is not expected to result in a consequential increase in the state's population. A majority of newly hired employees would likely be current New Mexico residents. However, it is estimated that approximately 20.0% of the new direct workers may be new residents to Santa Fe County. The local population impacts may result in new residential properties constructed in the county and increase the enrollment of local public schools.

Table 4. Population Impacts Over the Next 10 Years for the County

	Direct	Indirect & Induced	Total
Number of direct, indirect, and induced workers who will move to the County	10.0	4.1	14.1
Number of new residents in the County	26.0	10.7	36.7
Number of new residential properties to be built in the County	1.0	0.4	1.4
Number of new students expected to attend local school district	5.0	2.1	7.1

The Project is estimated to support an average of approximately \$0.8 million in new non-residential taxable property each year over the next 10 years. The taxable value of property supported by the Project over the 10-year period is shown in the following table.

Table 5. Value of Taxable Property Supported by the Project Over the Next 10 Years

Year	New Residential Property	The Project's Property				Subtotal Nonresidential Property	Total Residential & Nonresidential Property
		Land	Buildings & Other Real Prop. Improvements	Furniture, Fixtures, & Equipment			
1	\$36,693	\$0	\$133,333	\$6,667	\$140,000	\$176,693	
2	\$56,141	\$0	\$669,333	\$172,667	\$842,000	\$898,141	
3	\$95,439	\$0	\$682,720	\$155,333	\$838,053	\$933,493	
4	\$97,348	\$0	\$696,374	\$138,000	\$834,374	\$931,723	
5	\$99,295	\$0	\$710,302	\$120,667	\$830,969	\$930,264	
6	\$101,281	\$0	\$724,508	\$103,333	\$827,841	\$929,122	
7	\$103,307	\$0	\$738,998	\$86,000	\$824,998	\$928,305	
8	\$105,373	\$0	\$753,778	\$68,667	\$822,445	\$927,817	
9	\$107,480	\$0	\$768,854	\$51,333	\$820,187	\$927,667	
10	\$109,630	\$0	\$784,231	\$34,667	\$818,897	\$928,527	

The taxable value of residential property represents the value of properties that may be constructed as a result of new workers moving to the community.

This analysis assumes the residential real property appreciation rate to be 2.0% per year. The Project's real property is assumed to appreciate at a rate of 2.0% per year. The analysis assumes the Project's furniture, fixtures, and equipment will depreciate over time according to the depreciation schedule shown in Appendix A.

Temporary Construction Impact

The Project will include an initial period of construction lasting 2 year(s) where \$2.0 million will be spent to construct new buildings and other real property improvements. It is assumed that 50.0% of the construction expenditure will be spent on materials and 50.0% on labor. The temporary construction activity will support temporary economic impacts in the community in the form of temporary construction employment and sales for local construction firms.

Table 5. Spending and Estimated Direct Employment Impact of Project-Related Construction Activity

	Amount
Total construction expenditure	\$2,000,000
<i>Materials</i>	\$1,000,000
<i>Labor</i>	\$1,000,000
Temporary Construction Workers Supported (Average Earnings = \$44,250)	22.6

The following table presents the temporary economic impacts resulting from the construction.

Table 6. Temporary Economic Impact of Project-Related Construction Activity

	Direct	Indirect & Induced	Total
Number of temporary direct, indirect, and induced job years to be supported*	22.6	14.4	37.0
Salaries to be paid to direct, indirect, and induced workers	\$1,000,000	\$458,300	\$1,458,300
Revenues or sales for businesses related to construction	\$2,000,000	\$1,489,000	\$3,489,000

* A job year is defined as full employment for one person for 2080 hours in a 12-month span.

Gross receipt tax calculations related to construction activity are presented in the following table. The gross receipts tax revenue generated from construction-period taxable spending is included in the fiscal impact for affected districts.

Table 7. Construction-Related Taxable Spending

	Estimate
Expenditure for Materials	\$1,000,000
Percent of Materials subject to local gross receipts tax	0.0%
<u>Subtotal Taxable Materials</u>	<u>\$0</u>
Expenditure for Labor / Paid to construction workers	\$1,000,000
Percent of gross earnings spent on taxable goods and services	25.0%
Percent of taxable spending done locally	25.0%
<u>Subtotal Taxable Construction Worker Spending</u>	<u>\$62,500</u>
Expenditure for Furniture, Fixtures, & Equipment (FF&E)	\$520,000
Percent of FF&E subject to local gross receipts tax	25.0%
<u>Subtotal Taxable FF&E Purchases</u>	<u>\$130,000</u>
<u>Total Construction-Related Taxable Spending</u>	<u>\$192,500</u>

The above construction analysis focuses on the impact resulting from the Project's initial construction investments over the first 2 year(s).

Fiscal Impact Overview

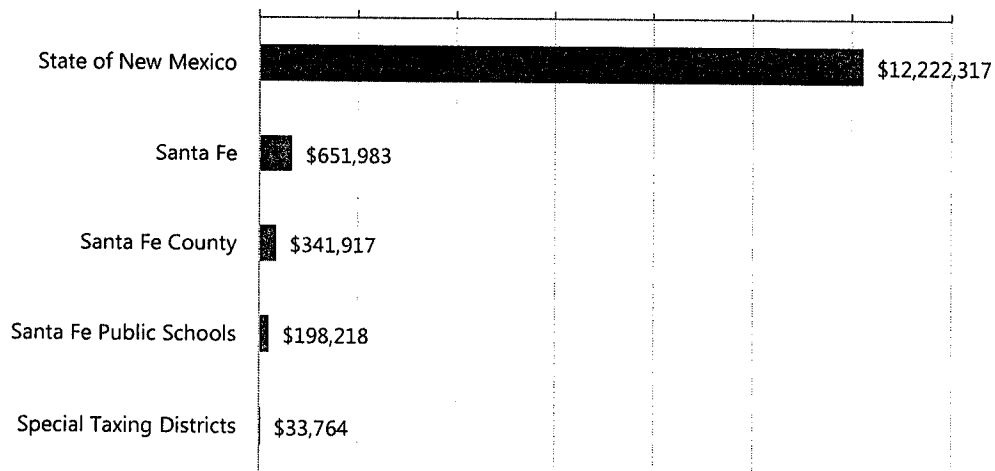
The Project will generate additional benefits and costs for local taxing districts, a summary of which is provided below. The source of specific benefits and costs are provided in greater detail for each taxing district on subsequent pages. Overall, the City will receive approximately \$652,000 in net benefits over the 10-year period and the Project will generate \$13,448,200 in total for all local taxing districts.

Table 8. Fiscal Net Benefits Over the Next 10 Years for the State and Local Taxing Districts

	Benefits	Costs	Net Benefits	Present Value of Net Benefits*
State of New Mexico	\$13,998,151	(\$1,775,835)	\$12,222,317	\$9,144,517
Santa Fe	\$949,921	(\$297,938)	\$651,983	\$502,926
Santa Fe County	\$433,490	(\$91,574)	\$341,917	\$262,488
Santa Fe Public Schools	\$377,230	(\$179,012)	\$198,218	\$148,718
Special Taxing Districts	\$33,764	\$0	\$33,764	\$25,523
Total	\$15,792,557	(\$2,344,358)	\$13,448,199	\$10,084,173

* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

Figure 1. Net Benefits Over the Next 10 Years for the State and Local Taxing Districts



State of New Mexico

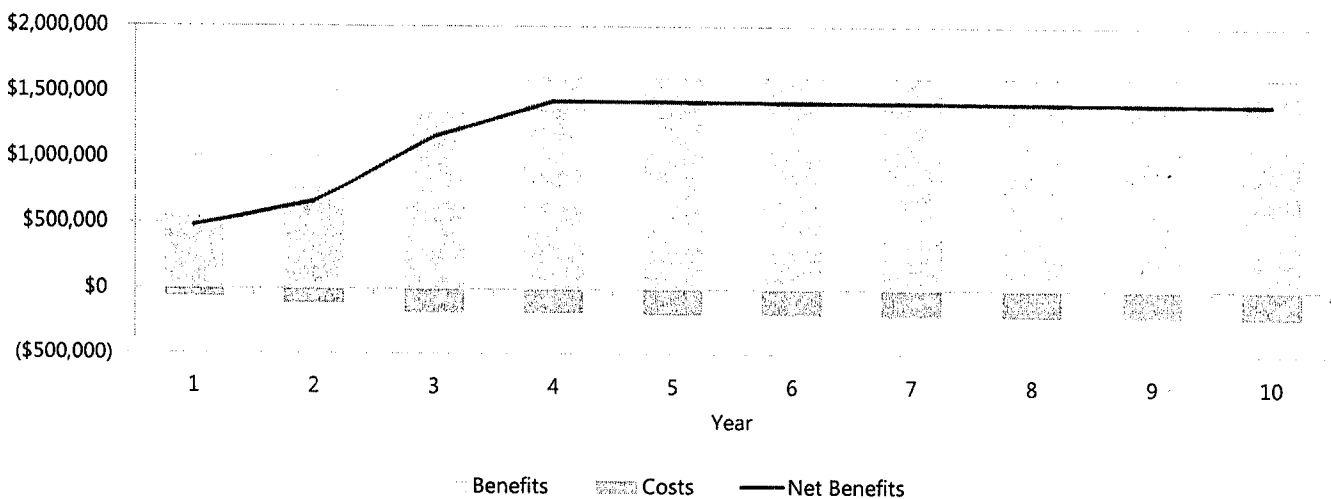
The table below displays the estimated additional benefits to be received by the State of New Mexico over the first 10 years. The project is expected to have a small effect on the statewide population and therefore some additional statewide costs to provide additional services were estimated for the state. Appendix C contains the year-by-year calculations.

Table 9. State of New Mexico: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Gross Receipts Taxes	\$821,314
Real Property Taxes - Project	\$9,061
FF&E Property Taxes - Project	\$1,275
Property Taxes - New Residential	\$1,240
Personal Income Taxes	\$5,268,447
Corporate Income Taxes	(\$494,522)
Miscellaneous Taxes & User Fees	\$8,391,337
Subtotal Benefits	\$13,998,151
Cost of Providing State Services	(\$1,775,835)
Subtotal Costs	(\$1,775,835)
Net Benefits	\$12,222,317
<i>Present Value (5% discount rate)</i>	<i>\$9,144,517</i>

Gross receipts taxes are estimated on new taxable gross receipts resulting from the project. Property taxes are estimated on the firm's property and new residential property constructed. Personal income taxes are estimated based on an effective income tax rate and the earnings of new direct and indirect workers. Corporate income taxes on the direct activity is based on the net taxable income projected by the company. Corporate income taxes on the indirect activity is estimated on a per indirect worker basis and the observed statewide corporate income tax collections per worker. To the extent that the project will result in an increase in new households in the state, additional miscellaneous taxes and user fees have been estimated for the state. Additionally, the costs to provide state services to these new households were also estimated based on recent state expenditure data as detailed in the Appendix.

Figure 2. Annual Fiscal Net Benefits for the State of New Mexico



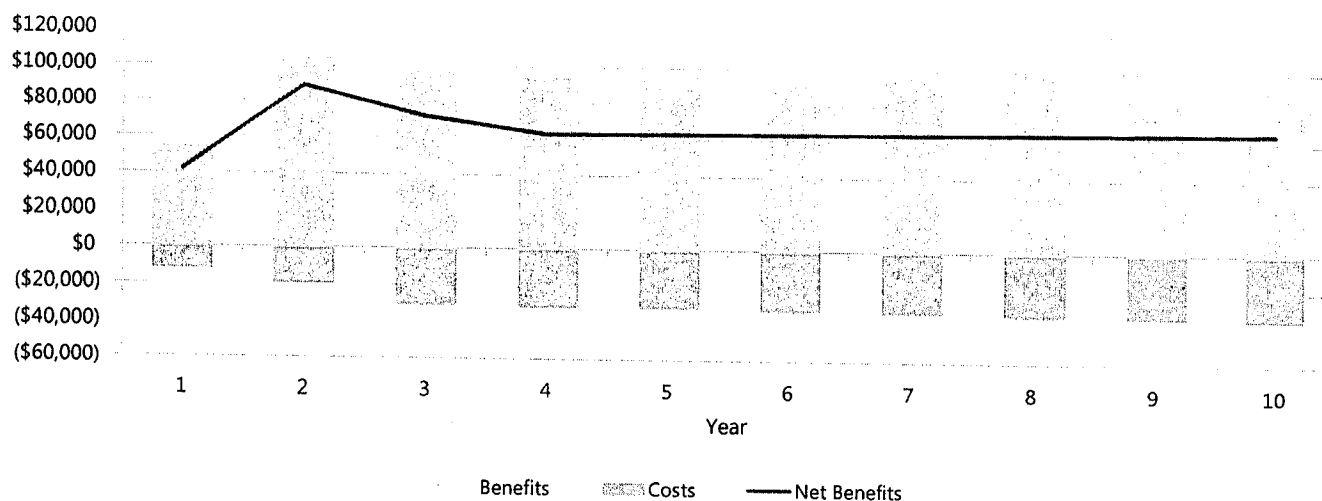
Santa Fe

The table below displays the estimated additional benefits, costs, and net benefits to be received by the City over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 10. Santa Fe: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Gross Receipts Taxes	\$581,478
Real Property Taxes - Project	\$26,357
FF&E Property Taxes - Project	\$3,708
Property Taxes - New Residential	\$2,227
Utility Revenue	\$135,986
Utility Franchise Fees	\$14,245
Building Permits and Fees	\$0
Lodgers Taxes	\$85,979
Miscellaneous Taxes & User Fees	\$99,942
Subtotal Benefits	\$949,921
Cost of Providing Municipal Services	(\$157,873)
Cost of Providing Utility Services	(\$140,065)
Subtotal Costs	(\$297,938)
Net Benefits	\$651,983
<i>Present Value (5% discount rate)</i>	<i>\$502,926</i>

Figure 3. Annual Fiscal Net Benefits for the Santa Fe



Santa Fe County

The table below displays the estimated additional benefits, costs, and net benefits to be received by the County over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 11. Santa Fe County: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Gross Receipts Taxes	\$247,087
Real Property Taxes - Project	\$92,081
FF&E Property Taxes - Project	\$12,955
Property Taxes - New Residential	\$10,114
Building Permits and Fees	\$0
Miscellaneous Taxes & User Fees	\$71,254
Subtotal Benefits	\$433,490
Cost of Providing County Services	(\$91,574)
Subtotal Costs	(\$91,574)
Net Benefits	\$341,917
<i>Present Value (5% discount rate)</i>	<i>\$262,488</i>

Santa Fe Public Schools

The table below displays the estimated additional benefits, costs, and net benefits to be received by the school district over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 12. Santa Fe Public Schools: Benefits, Costs, and Net Benefits Over the Next 10 Years

	Amount
Real Property Taxes - Project	\$60,462
FF&E Property Taxes - Project	\$8,506
Property Taxes - New Residential	\$7,859
State Equalization Guarantee	\$300,403
Subtotal Benefits	\$377,230
Cost of Educating New Students	(\$179,012)
Subtotal Costs	(\$179,012)
Net Benefits	\$198,218
<i>Present Value (5% discount rate)</i>	<i>\$148,718</i>

Benefits for Other Taxing Districts

The table below displays the estimated additional property taxes to be received by other property taxing districts over the next 10 years of the Project. Appendix C contains the year-by-year calculations.

Table 13. Other Taxing Districts: Benefits Over the Next 10 Years

	Amount
Real Property Taxes - Project	\$26,650
FF&E Property Taxes - Project	\$3,749
Property Taxes - New Residential	\$3,365
Benefits	\$33,764
<i>Present Value (5% discount rate)</i>	\$25,523

City Non-Tax Incentives

The City is considering the following non-tax incentives for the Project.

Table 17. City Incentives Under Consideration

Year	Enter Incentive Description
1	\$100,000
2	\$0
3	\$0
4	\$0
5	\$0
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0
Total	\$100,000

These financial incentives may be considered an investment in the Project made by the city. Four calculations analyzing possible investments were made:

1. Net Benefits - detailed above
2. Present Value of Net Benefits - detailed above
3. Rate of Return on Investment - discussed and detailed below
4. Payback Period - discussed and detailed below

The rate of return on investment calculates the average annual rate of return to the city, treating the incentives as the initial investment and the net benefits to the city as the return on investment. The payback period is the number of years that it will take the city to recover the cost of incentives from the additional revenues that it will receive as a result of the Project.

The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return, and payback period.

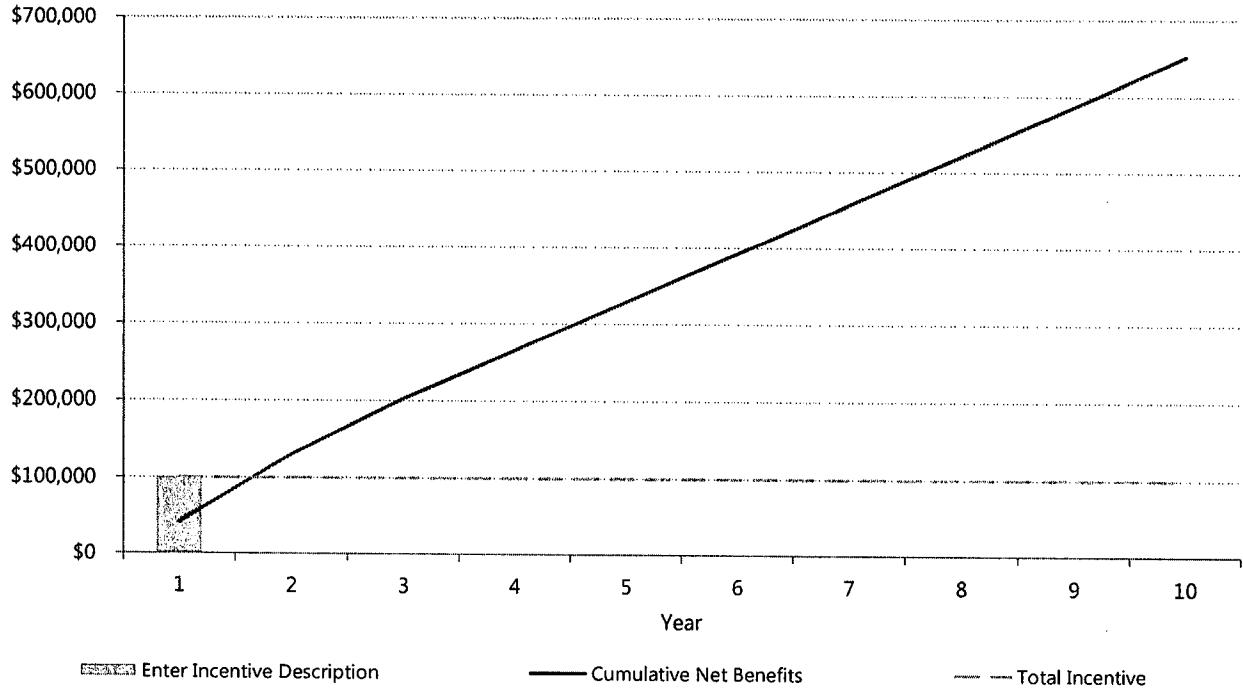
Table 18. Analysis of City Incentives

Total Non-Tax Incentive	\$100,000
Incentive Per Job	\$2,000
Rate of Return	65.2%
Payback period (years)	1.7

Note: The Rate of Return and Payback Period are calculated based on the sum of annual incentives, not the present value of the incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the City. The intersection indicates the length of time until the incentives are paid back.

Figure 4. City Incentives Under Consideration



State Non-Tax Incentives

The state is considering the following non-tax incentives for the Project.

Table 21. State Incentives Under Consideration

Year	Enter Incentive Description
1	\$500,000
2	\$0
3	\$0
4	\$0
5	\$0
6	\$0
7	\$0
8	\$0
9	\$0
10	\$0
Total	\$500,000

These financial incentives may be considered an investment in the Project made by the state. Four calculations analyzing possible investments were made:

1. Net Benefits - detailed above
2. Present Value of Net Benefits - detailed above
3. Rate of Return on Investment - discussed and detailed below
4. Payback Period - discussed and detailed below

The rate of return on investment calculates the average annual rate of return to the state, treating the incentives as the initial investment and the net benefits to the state as the return on investment. The payback period is the number of years that it will take the state to recover the cost of incentives from the additional revenues that it will receive as a result of the Project.

The table below shows an analysis of these incentives, including a calculation of incentives per job, rate of return, and payback period.

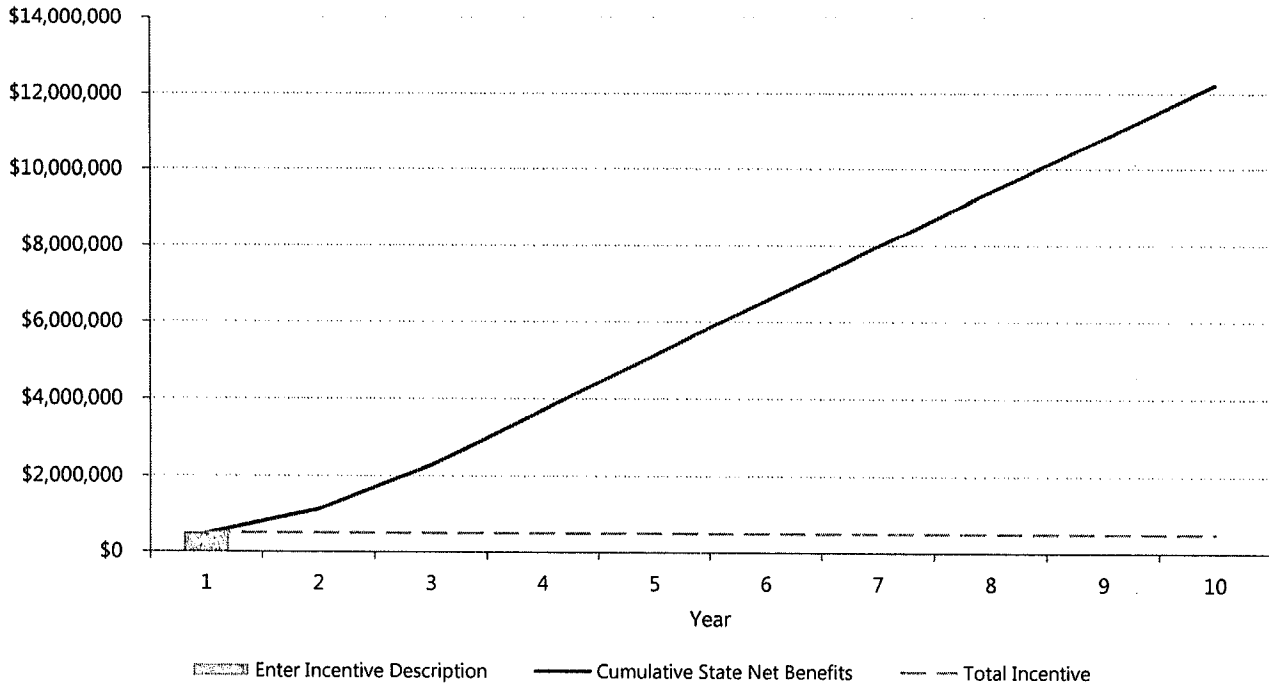
Table 22. Analysis of State Incentives

Total Non-Tax Incentive	\$500,000
Incentive Per Job	\$10,000
Rate of Return	244.4%
Payback period (years)	1.0

Note: The Rate of Return and Payback Period are calculated based on the sum of annual incentives, not the present value of the incentives.

The graph below depicts the total incentives currently under consideration versus the cumulative net benefits to the State. The intersection indicates the length of time until the incentives are paid back.

Figure 6. State Incentives Under Consideration



0

Overview of Methodology

This report presents the results of an analysis undertaken by the New Mexico Economic Development Department using Total Impact, an economic and fiscal impact analysis tool developed and supported by the Austin, TX based economic consulting firm, Impact DataSource.

The Total Impact model combines project-specific attributes with community data, tax rates, and assumptions to estimate the economic impact of the Project and the fiscal impact for local taxing districts over a 10-year period.

The economic impact as calculated in this report can be categorized into two main types of impacts. First, the direct economic impacts are the jobs and payroll directly created by the Project. Second, this economic impact analysis calculates the indirect and induced impacts that result from the Project. Indirect jobs and salaries are created in new or existing area firms, such as maintenance companies and service firms, that may supply goods and services for the Project. In addition, induced jobs and salaries are created in new or existing local businesses, such as retail stores, gas stations, banks, restaurants, and service companies that may supply goods and services to new workers and their families.

The economic impact estimates in this report are based on the Regional Input-Output Modeling System (RIMS II), a widely used regional input-output model developed by the U. S. Department of Commerce, Bureau of Economic Analysis. The RIMS II model is a standard tool used to estimate regional economic impacts. The economic impacts estimated using the RIMS II model are generally recognized as reasonable and plausible assuming the data input into the model is accurate or based on reasonable assumptions. Impact DataSource utilizes county-level multipliers to estimate the impact occurring at the sub-county level.

Two types of regional economic multipliers were used in this analysis: an employment multiplier and an earnings multiplier. An employment multiplier was used to estimate the number of indirect and induced jobs created or supported in the area. An earnings multiplier was used to estimate the amount of salaries to be paid to workers in these new indirect and induced jobs. The employment multiplier shows the estimated number of total jobs created for each direct job. The earnings multiplier shows the estimated amount of total salaries paid to these workers for every dollar paid to a direct worker. The multipliers used in this analysis are listed below:

Multiplier		City	County	State
Employment Multiplier	(Type II Direct Effect)	1.3075	1.4100	1.7653
Earnings Multiplier	(Type II Direct Effect)	1.2012	1.2683	1.5009

Calculation of Fiscal Impact

Calculation of Revenues for the State

The state's revenues from gross receipts taxes, property taxes, personal and corporate income taxes were estimated directly using data entered about the project and state tax rates and assumptions about workers moving to the area and possibly building new property.

Impact DataSource estimated the miscellaneous taxes and user fees as a function of statewide personal income. The data used to estimate these factors were obtained from the US Census of Governments and the Bureau of Economic Analysis. Next, these percentages were applied to the total increase in workers' earnings from the economic impact calculations to determine the annual miscellaneous taxes and user fees to be collected by the state related to the permanent increase in economic activity supported by the project.

The fiscal costs associated with the project result from the portion of new worker households that relocate to New Mexico to take a job and the resulting costs to provide state services to these new residents. Impact DataSource estimated the cost of providing state services to new worker households moving to the state by applying the average per household cost of state expenditures to the estimated number of new workers new to the state.

Impact DataSource determined the marginal cost to provide state government services on per household in the state by using approximately 40% of the average cost. The data used to estimate these costs were obtained from the US Census of Governments and US Census. On average, the state incurs \$5,000 in costs to provide these services to households.

Calculation of Revenues for the City

The city's revenues from gross receipts taxes, property taxes, city-owned utilities, utility franchise fees, lodging taxes, and building permits and fees were estimated directly using data entered about the project and local tax rates and assumptions about workers moving to the area and possibly building new property.

The new firm was not asked for nor could reasonably provide some data for calculating some other revenues for the city. For example, while the city will likely receive revenues from fines paid on speeding tickets given to new workers at the firm, the firm may not reasonably know the propensity of its workers to speed. Therefore, some other city revenues were calculated using an average revenue approach. This approach uses two assumptions:

- 1 - The city has two general revenue sources -- revenues from residents and revenues from businesses.
- 2 - The city will collect (a) about the same amount of other revenues from each household of new workers that may move to the city as it currently collects from an average household of existing residents, and (b) about the same amount of other revenues from the new firm (on a per worker basis) will be collected as the city collects from other businesses in the city.

Using this average revenue approach, revenues likely to be received by the city were calculated from the households of new workers who may move to the city and from the new firm using average city revenues per household and per worker calculations. These revenues are labeled as miscellaneous taxes and user fees.

The total annual city revenues used to make average revenue calculations in this analysis were obtained from the city's latest annual budget and the per household and per worker and calculations are detailed in Appendix A.

Calculation of Costs for the City

This analysis sought to answer the question, what additional monies will the city have to spend to provide services to households of new workers who may move to the city and to the firm. A marginal cost approach was used to calculate additional city costs from the new firm and its workers.

This approach uses two assumptions:

- 1 - The city spends money on services for two general groups -- residents and businesses.
- 2 - The city will spend (a) about the same amount for variable or marginal cost for each household of new workers that may move to the city as it currently spends for an average household of existing residents, and (b) about the same amount for variable or marginal costs for the new firm (on a per worker basis) as it spends for other businesses in the city.

Calculation of Net Benefits for the City

Net benefits calculated in this analysis are the difference between additional city revenues over a ten-year period and additional city costs to provide services to the new firm and its workers and indirect workers who may move to the city.

Calculation of Revenues, Costs and Net Benefits for the County

The model estimates additional revenues, costs and net benefits for the county using the same methodology described for the city relying on county budget data.

Calculation of Revenues for Public Schools

The school district's revenues from property taxes were calculated on the new residential property for some new direct and indirect workers who may move to the county and on the firm's property that will be added to local tax rolls.

However, school district revenues from state and federal funds and other local funding were calculated using an average revenue approach. This approach used the assumption that the school district will collect about the same amount of these revenues for each new student in the household of a new worker who may move to the county as it currently collects for each existing student.

Calculation of Costs for Public Schools

A marginal cost approach was used to calculate additional school district costs from the new firm and its workers. This approach uses the assumption that the school district will spend about the same amount for variable or marginal cost for each new student as it spends for each existing student.

Calculation of Net Benefits for Public Schools

Net benefits calculated in this analysis are the difference between additional school district revenues over a ten-year period and marginal costs for the school district to provide services to students in the households of new workers who may move to the county.

The school district's total annual revenues and expenses to make average revenue and marginal costs calculations in this analysis were obtained from the school district's latest annual budget.

Calculation of Property Taxes to be Collected by Countywide Special Taxing Districts

Revenues for countywide special taxing districts from property taxes were calculated on the new residential property for some new direct and indirect workers who may move to the county and on the firm's property that will be added to local tax rolls.

While each of these special taxing districts may incur additional costs from new residents and from the new firm, these additional costs were not calculated in this analysis.

About Impact DataSource

Impact DataSource is an Austin economic consulting, research, and analysis firm founded in 1993. The firm has conducted over 2,500 economic impact analyses of firms, projects, and activities in most industry groups in New Mexico and more than 30 other states.

In addition, Impact DataSource has prepared and customized more than 50 economic impact models for its clients to perform their own analyses of economic development projects. These clients include the Frisco EDC in Texas and the Metro Orlando (Florida) Economic Development Commission.

Attachment D

Descartes Labs, Inc.

Sample Affidavit Quarterly Report

Affidavit

Whereas agreed to in the Project Participation Agreement (PPA) dated ____ between the City of Santa Fe (City) and Descartes Labs, Inc. (QE), the QE will provide quarterly reports in the form of a signed affidavit indicating how the QE has met the Job Creation Schedule in PPA's Attachment A, I, Mark Johnson, CEO, of Santa Fe, New Mexico make an oath and say that:

1. As of ____ (date) the QE was still in the construction phase of the project and has not begun hiring additional employees.
2. The number of workers in construction jobs on this project was ____ FTE. (contractor states full time as 32 hours per week) and ____ workers part time.
3. The average rate of pay for all construction workers on this project was ____ per hour/per year.
4. Certification of Non-Interest: I, Mark Johnson, certify to the City that no member, officer or employee of the City or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one year thereafter, shall have any interest, direct or indirect, in the QE or any contract or subcontract, or the process thereof, for work to be performed in conjunction with the Project that is the subject of this agreement.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE AND BELIEF.

Date

Mark Johnson, CEO and President of
Descartes Labs, Inc.

SUBSCRIBED AND SWORN TO ME

On the _____ day of _____

Notary Public

My commission expires: _____

**INTERGOVERNMENTAL AGREEMENT
NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND
THE CITY OF SANTA FE, NEW MEXICO**

This Intergovernmental Agreement (“Agreement”) is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department (“EDD”) and the City of Santa Fe, a municipal corporation of the State of New Mexico (“City”), collectively referred to as the “Parties,” with reference to the following facts.

SECTION 1. RECITALS:

WHEREAS, the New Mexico State Legislature enacted Laws 2014, Chapter 63, Section 5, Subsection 33 which appropriated ten million dollars (\$10,000,000) to EDD “[f]or economic development projects pursuant to the Local Economic Development Act” (the “Appropriation”); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §§ 5-10-1 through 5-10-13 (2007) (“LEDA”), is to provide “public support for economic development to foster, promote, and enhance local economic development efforts...”; and

WHEREAS, the City has adopted LEDA by Ordinance 2004-42 which established the City’s Economic Development Plan that promotes economic development within the City and Ordinances Nos. 2008-42 and 2018-4 amending the Economic Development Plan Ordinance; and

WHEREAS, the City has adopted Ordinance No. 2018-2 (“Ordinance”) to approve the economic development project (“Project”) to secure the expansion of Descartes Labs, Inc., a Delaware corporation (“Descartes”) within the City; and

WHEREAS, the City has entered into a Local Economic Development Project Participation Agreement (“PPA”) with Descartes Labs, Inc. and, pursuant to the terms of that PPA, Descartes Labs, Inc. will provide a substantive contribution in exchange for the public contribution. A copy of the PPA and any amendments are attached hereto as **Exhibit A**; and

WHEREAS, the EDD and the City desire to enter into this Agreement to facilitate disbursement of funds for the Project;

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

SECTION 2. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to place the primary responsibility on the City to oversee and administer the appropriation for the Project. It is the intent of the Parties that the EDD will transfer an amount not to exceed Seven Hundred Thousand Dollars (\$700,000.00) (the “Funds”) from the Appropriation to the City for expenditures made to implement the Project. The Parties agree that any and all State Funds received by the City will be accounted for by the City as the fiscal agent for the EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the Project, or any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

SECTION 3. SCOPE OF WORK:

The City will act as fiscal agent for the appropriation supporting the Project. EDD will transfer an amount not to exceed Seven Hundred Thousand Dollars (\$700,000.00)

from the Appropriation to the City for expenditures made to implement the Project, pursuant to the LEDA statutes. In exchange for the appropriation, Descartes Labs, Inc. will create 50-70 new jobs and contribute up to Four Million Two Hundred Nine Thousand Dollars (\$4,209,000) in capital investment within five years after the execution of this Agreement. On June 30, 2017, Descartes' starting headcount was 20 full-time jobs, so the starting headcount for this Project is the net jobs above 20 jobs. The EDD expressly agrees that "new" jobs are those jobs created by Descartes on or after July 1, 2017. The City will quarterly review the Project timeline and progress until the five-year anniversary of this Agreement or until the City certifies to the EDD that the requisite Economic Development Goals have been completed to the City's satisfaction or that the EDD contribution of no greater than \$700,000 in Funds has been reimbursed to EDD. In the event that Descartes Labs, Inc. falls below the hiring target in any given period, reimbursements will be suspended until hiring target is achieved and sustained for at least ninety (90) days.

The EDD and the City agree that failure of Descartes Labs, Inc. to make its required contribution, as defined in the PPA, will result in a violation of the terms and conditions of the PPA. Such violation, after any cure period granted, will require that the City foreclose on the security interest. All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement by reference. All state funds recaptured from Descartes by the City shall be returned to EDD within 60 days.

SECTION 4. CITY OF SANTA FE RESPONSIBILITIES:

The City shall:

1. Submit all documentation supporting expenditures made to implement the Project in a format acceptable to the City. The City shall notify the EDD in

writing of any default by Descartes Labs, Inc. within 30-60 days of the event of default, as defined in the PPA (“Default”);

2. Serve as fiscal agent for the Funds transferred to it under this Agreement;
3. Complete all of the following goals identified in this Agreement within the time limits agreed upon by the Parties:
 - a. Account for receipts and disbursements of reimbursed Funds;
 - b. Provide the EDD with the required financial documentation pertaining to this disbursement; and
 - c. Submit all required and reasonably requested documentation to the EDD, including the endorsed LEDA Ordinance approved by the City Council accepting the Project for Descartes as a qualifying entity pursuant to LEDA. Such documentation shall include a fully executed copy of the Descartes Labs’ security interest, and copies of invoices and other documentation as required by the EDD within the time required; and
4. Not impose any obligations on EDD with respect to the administration of this Project, other than the reimbursement of Funds described in this Agreement; and
5. Monitor job creation by Descartes Labs, Inc. and report the number of jobs created each quarter to EDD for a period of five years after this Agreement has been fully executed . Quarterly reports shall include a copy of FORM ES-903 (or any form substituted therefore by the State) provided by

Descartes Labs, Inc. to the City, on file with the New Mexico Department of Workforce Solutions.

The Parties have created a schedule as listed in Attachment A of the PPA, which is hereby incorporated into this Agreement and made a part hereof by this reference as though set forth in full.

SECTION 5. CITY CERTIFICATIONS:

As fiscal agent, the City hereby assures and certifies that:

1. It will comply with all applicable State laws, regulations, policies, guidelines, and requirements with respect to the acceptance and use of State funds;
2. It has the legal authority to receive and expend the funds;
3. It will enforce the provisions of Ordinance No. 2018-2 approving the Project;
4. It has exercised due diligence in certifying that the Project is a viable economic development initiative with potential long-term economic development benefits;
5. It will provide the EDD documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and copies of reports and documentation it receives from Descartes;
6. It has entered into a PPA and has obtained all financial documentation necessary to protect the City's and the State's investments in this project;

7. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined in Section 2 - Purpose of Agreement and Section 3 - Scope of Work, stated above;
8. It will notify the EDD of any Default within 60 days of an event of Default. Further, the City shall provide the opportunity for any Default to be cured by Descartes Labs, Inc., in accordance with the PPA prior to termination thereof;
9. No member, officer, or employee of the City or its designees or agents, no member of the governing body of the locality of which the program is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City shall require Descartes to incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and
10. It has complied with Article IX, Section 14 of the New Mexico Constitution, known as the "anti-donation clause."

SECTION 6. EDD RESPONSIBILITIES:

EDD shall:

1. Transfer an amount not to exceed Seven Hundred Thousand Dollars (\$700,000.00) from the Appropriation to the City for expenditures made to implement the Project; and
2. At the EDD's discretion, review and audit the Project if it is deemed to be necessary or desirable.

SECTION 7. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate when Descartes Labs, Inc. documents to the City's satisfaction that the required Economic and Development Goals, as defined in the PPA, have been satisfied, or until the PPA is otherwise terminated or expires, whichever occurs earlier.

SECTION 8. LIABILITY:

No Party shall be responsible for liability incurred as a result of the other Party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.* The Parties may agree to reimburse one another under these liability provisions, subject to sufficient appropriation by the New Mexico Legislature or sufficient funds being available to the Party, as determined by the Party responsible for payment.

SECTION 9. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS:

1. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.
2. The City Finance Department shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for

the Project, the purposes for which such funds were used, and such other records as the EDD may require.

3. If, upon the expiration of the Project or the termination date of this Agreement, any surplus Funds are possessed by the City, the City shall return said Funds to the EDD for disposition in accordance with law

SECTION 10. STRICT ACCOUNTABILITY:

The City Finance Department shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 11. REPORTS:

The City shall submit to the EDD the quarterly employment report in the form of an affidavit signed by an officer of Descartes Labs, Inc., which Descartes Labs, Inc. is required to submit quarterly to the City. The City Office of Economic Development shall submit to the EDD the quarterly reports that Descartes Labs, Inc. is required to submit to the City, including copies of Form ES-903 (or any form substituted therefor by the State), filed by Descartes Labs, Inc. with the New Mexico Department of Workforce Solutions. The City Office of Economic Development shall submit to the EDD a final report respecting direct and indirect job creation and retention attributable to the State appropriation on or before the termination of this Agreement. The Final Report shall contain a description of work accomplished, the methods and procedures used, a detailed

budget breakdown of expenditures, a description of any problems or delays encountered and the reasons therefore, and such other information as may be requested by the EDD.

SECTION 12. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to a Party by this Agreement shall be in writing and shall be delivered in person, by courier service, or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The Parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

If to the EDD:

Attn: Juan Torres
NM Economic Development
Department
Financial Development Team Leader
Joseph Montoya Building
1100 St. Francis Drive
Santa Fe, New Mexico 87505
Juan.torres@state.nm.us

If to the City:

Attn: Matthew Brown
Director, Office of Economic
Development
500 Market Station, Suite 200
Santa Fe, New Mexico 87504
mpbrown@ci.santa-fe.nm.us

SECTION 13. AMENDMENTS:

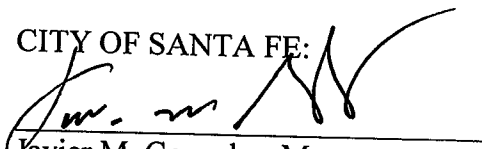
This Agreement shall not be altered, changed, or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 14. GOVERNING LAW:

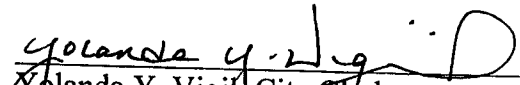
This Agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the last signature affixed below.

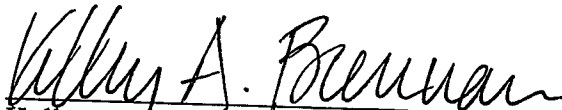
CITY OF SANTA FE:


Javier M. Gonzales, Mayor

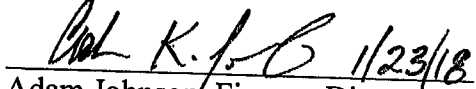
ATTEST:


Yolanda Y. Vigil, City Clerk
CC mtg. 11/18/18

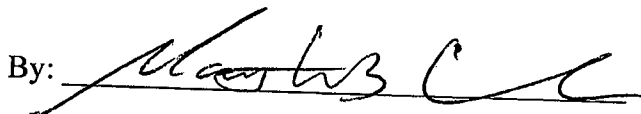
APPROVED AS TO FORM:


Kelley A. Brennan, City Attorney

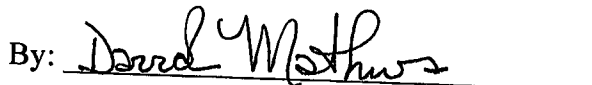
Approved:


Adam Johnson, Finance Director

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: 
Matthew Geisel, Cabinet Secretary

Date: 2/26/2018

By: 
David Mathews

Its: General Counsel, certifying legal sufficiency

Attachment F

Descartes Labs, Inc.

LEDA Disbursement Schedule

Date	Disbursement Amount	Disbursement Performance Milestone
June 30, 2018	\$420,000 (State - \$400,000; City - \$20,000)	Obtain Certificate of Occupancy
June 30, 2019	\$120,000 (State - \$90,000; City - \$30,000)	Hire 36 additional employees for a total Headcount of 56.
June 30, 2020	\$50,000 (City)	Hire 45 additional employees for a total Headcount of 65.
January 1, 2021	\$10,000 (State)	Maintain a total of 70 total headcount for 6 months and complete an end of project review.
BONUS	\$10,000 per employee up to a total of \$200,000 (State)	Every new employee over a total headcount of 70 maintained in position for 6 months prior to June 30, 2022.

**CITY OF SANTA FE
ECONOMIC DEVELOPMENT
TERMINATION OF A LOCAL ECONOMIC DEVELOPMENT ACT PROJECT
PARTICIPATION AGREEMENT AND AN INTERGOVERNMENTAL
AGREEMENT**

THIS TERMINATION AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2022, by and between the City of Santa Fe, a municipal corporation (hereinafter referred to as the “City”), the State of New Mexico, Economic Development Department (the “State”), and Descartes Labs, Inc. a Delaware Corporation registered as a foreign profit corporation in the State of New Mexico (hereinafter referred to as the “Descartes Labs” or “Q/E”).

WHEREAS, the City of Santa Fe enacted Ordinance 2018-1 on January 10, 2018, which adopted the Local Economic Development Project Participation Agreement (PPA) between the City and Descartes Labs and all its attachments, which declared Descartes Labs a Qualifying Entity (Q/E); and

WHEREAS, the PPA Agreement Item #18-0057 made the City a fiscal agent for the grant monies (“Grant Monies”) granted by the City and State through its Office of Economic Development through the Intergovernmental Agreement; and

WHEREAS, when the Q/E initially agreed to LEDA terms with the City of Santa Fe and the State of New Mexico through the PPA, an economic impact analysis that by year three (3) of the agreement, the company would generate \$2.29M in net benefits to the State of New Mexico and \$1.232M to the City of Santa Fe; and

WHEREAS, Descartes Labs submitted a request to terminate its agreement early due to a changing environment beyond its control, in particular- COVID-19, which has forced other business decisions by Descartes Labs that do not align with its current PPA agreement; and

WHEREAS, Descartes Labs has submitted actual data of its total operation from the time of the PPA until October 31, 2020, spanning a time frame of approximately 3 years, which has not met the prior economic impact analysis; and

WHEREAS, the State of New Mexico has conducted an analysis based actual data using the same principles as the original economic analysis, which indicates that Descartes Labs has generated a net benefit of \$1.22M at year three to the State of New Mexico and \$198K to the City of Santa Fe; and

WHEREAS, at the time of entering into the PPA, the State of New Mexico pledged \$700,000 to Descartes Labs and the City of Santa Fe pledged \$100,000 to Descartes Labs, based on the projections provided by Descartes Labs that were used in the initial analysis; and

WHEREAS, pursuant to Section 5 of the PPA, Descartes securitized the agreement via a letter of credit; and

WHEREAS, currently Descartes has accessed \$490,000 from the State of New Mexico and \$50,000 from the City of Santa Fe pledge; and

WHEREAS, based on the comparison between the data derived from the initial analysis and the data from the actual analysis, the following conclusions can be derived:

- a. Descartes Labs has accessed 70% of the State of New Mexico Funds;
- b. Descartes Labs has accessed 50% of the City of Santa Fe Funds;
- c. The State of New Mexico has received 64% of the anticipated benefit from this project;
- d. The City of Santa Fe has received 24% of the anticipated benefit from this project;

WHEREAS, the City, State, and Descartes have negotiated a recapture and early termination proposal that balances the amount of funds accessed in relation to the percentage of benefit received by the City and State; and

WHEREAS, the City and State have determined that it is in the best interest of the parties to terminate the PPA for the purposes of effectuating the City's economic development plan and to provide Descartes Labs an early termination pursuant to Section 7 of the PPA.

NOW, THEREFORE, in consideration of the foregoing, the following, and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned parties hereby agree to terminate the PPA and Intergovernmental Agreement as follows:

The Q/E will:

- 1) Pay \$122,378 in funds to the State of New Mexico Economic Development Department;
- 2) Pay \$18,943 in funds to the City of Santa Fe Economic Development Department.

Upon receipt of the \$141,321 amount, \$122,378 to the State of New Mexico and \$18,943 to the City of Santa Fe, the City will release Descartes Labs' security instrument, the letter of credit.

Once the payment has been made and the security instrument is released, the PPA and Intergovernmental Agreement will be terminated.

NOW, THEREFORE, if the terms above are not met within one month of the execution of this agreement, then the PPA will resume in full effect with all remedies in equity and law.

[Signatures are on the following pages]

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

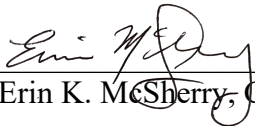
CITY OF SANTA FE:

Alan M. Webber, Mayor

ATTEST:

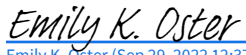
Kristine Bustos Mihelcic, City Clerk

APPROVED AS TO FORM:



Erin K. McSherry, City Attorney

APPROVED:


[Emily K. Oster \(Sep 29, 2022 12:37 MDT\)](#)

Emily K. Oster Finance Director

2122800.510400

Munis Org Number

[Signatures continue on the next page]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: Mark Roper
Mark Roper,

Date: 9.22.22

By: Jesika Ullibarri
Jesika Ullibarri,

Its: General Counsel, approving as to form

[Signatures continue on the next page]

**CITY OF SANTA FE
ECONOMIC DEVELOPMENT
TERMINATION OF A LOCAL ECONOMIC DEVELOPMENT ACT PROJECT
PARTICIPATION AGREEMENT AND AN INTERGOVERNMENTAL
AGREEMENT**

THIS TERMINATION AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2022, by and between the City of Santa Fe, a municipal corporation (hereinafter referred to as the “City”), the State of New Mexico, Economic Development Department (the “State”), and Descartes Labs, Inc. a Delaware Corporation registered as a foreign profit corporation in the State of New Mexico (hereinafter referred to as the “Descartes Labs” or “Q/E”).

WHEREAS, the City of Santa Fe enacted Ordinance 2018-1 on January 10, 2018, which adopted the Local Economic Development Project Participation Agreement (PPA) between the City and Descartes Labs and all its attachments, which declared Descartes Labs a Qualifying Entity (Q/E); and

WHEREAS, the PPA Agreement Item #18-0057 made the City a fiscal agent for the grant monies (“Grant Monies”) granted by the City and State through its Office of Economic Development through the Intergovernmental Agreement; and

WHEREAS, when the Q/E initially agreed to LEDA terms with the City of Santa Fe and the State of New Mexico through the PPA, an economic impact analysis that by year three (3) of the agreement, the company would generate \$2.29M in net benefits to the State of New Mexico and \$1.232M to the City of Santa Fe; and

WHEREAS, Descartes Labs submitted a request to terminate its agreement early due to a changing environment beyond its control, in particular- COVID-19, which has forced other business decisions by Descartes Labs that do not align with its current PPA agreement; and

WHEREAS, Descartes Labs has submitted actual data of its total operation from the time of the PPA until October 31, 2020, spanning a time frame of approximately 3 years, which has not met the prior economic impact analysis; and

WHEREAS, the State of New Mexico has conducted an analysis based actual data using the same principles as the original economic analysis, which indicates that Descartes Labs has generated a net benefit of \$1.22M at year three to the State of New Mexico and \$198K to the City of Santa Fe; and

WHEREAS, at the time of entering into the PPA, the State of New Mexico pledged \$700,000 to Descartes Labs and the City of Santa Fe pledged \$100,000 to Descartes Labs, based on the projections provided by Descartes Labs that were used in the initial analysis; and

WHEREAS, pursuant to Section 5 of the PPA, Descartes securitized the agreement via a letter of credit; and

WHEREAS, currently Descartes has accessed \$490,000 from the State of New Mexico and \$50,000 from the City of Santa Fe pledge; and

WHEREAS, based on the comparison between the data derived from the initial analysis and the data from the actual analysis, the following conclusions can be derived:

- a. Descartes Labs has accessed 70% of the State of New Mexico Funds;
- b. Descartes Labs has accessed 50% of the City of Santa Fe Funds;
- c. The State of New Mexico has received 64% of the anticipated benefit from this project;
- d. The City of Santa Fe has received 24% of the anticipated benefit from this project;

WHEREAS, the City, State, and Descartes have negotiated a recapture and early termination proposal that balances the amount of funds accessed in relation to the percentage of benefit received by the City and State; and

WHEREAS, the City and State have determined that it is in the best interest of the parties to terminate the PPA for the purposes of effectuating the City's economic development plan and to provide Descartes Labs an early termination pursuant to Section 7 of the PPA.

NOW, THEREFORE, in consideration of the foregoing, the following, and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned parties hereby agree to terminate the PPA and Intergovernmental Agreement as follows:

The Q/E will:

- 1) Pay \$122,378 in funds to the State of New Mexico Economic Development Department;
- 2) Pay \$18,943 in funds to the City of Santa Fe Economic Development Department.

Upon receipt of the \$141,321 amount, \$122,378 to the State of New Mexico and \$18,943 to the City of Santa Fe, the City will release Descartes Labs' security instrument, the letter of credit.

Once the payment has been made and the security instrument is released, the PPA and Intergovernmental Agreement will be terminated.

NOW, THEREFORE, if the terms above are not met within one month of the execution of this agreement, then the PPA will resume in full effect with all remedies in equity and law.

[Signatures are on the following pages]

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

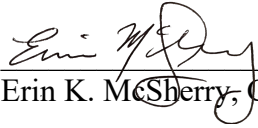
CITY OF SANTA FE:

Alan M. Webber, Mayor

ATTEST:


Kristine Bustos Mihelcic, City Clerk

APPROVED AS TO FORM:



Erin K. McSherry, City Attorney

APPROVED:


[Emily K. Oster \(Sep 29, 2022 12:37 MDT\)](#)

Emily K. Oster Finance Director

2122800.510400

Munis Org Number

[Signatures continue on the next page]

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: Mark Roper
Mark Roper,

Date: 9.22.22

By: Jesika Ullibbarri
Jesika Ullibbarri,

Its: General Counsel, approving as to form

[Signatures continue on the next page]



City of Santa Fe, New Mexico

Memorandum



Date: September 9, 2022

To: Quality of Life Committee and Governing Body

Via: Kyra Ochoa, Community Health and Safety Director ^{KO}
Paul Joye, Chief of Police ^{PJ}

From: Matthew Champlin, Deputy Chief of Police ^{mc}

RE: Excessive Noise Violations

EXECUTIVE SUMMARY:

The proposed ordinance amends Section 12-10-1.10 of the Uniform Traffic Ordinance (“UTO”) to specify that selling, offering to sell, installing and offering to install muffler modifications that increase the noise, fumes, or smoke of a vehicle is a violation and prohibits persons from selling or installing an illegal muffler. The bill also removes redundant language and adds examples of the types of modifications that are not permitted. Additionally, the bill amends Schedule A of the UTO to increase the penalties for muffler noise violations (12-10-1.10) and implements a graduated scale of increasing fine amounts for successive offenses, including making dealers susceptible to penalties.

BACKGROUND:

In recent years, the Santa Fe Police Department, Constituent Services, and members of Governing Body have received increased complaints regarding the use of loud modified mufflers in the City of Santa Fe. Loud mufflers have a direct impact on the quality of life in several areas of the city. This includes not only high pedestrian traffic and open commerce areas such as the Santa Fe Plaza and downtown area, but also residential neighborhoods throughout the city.

City officials have held numerous meetings to discuss innovative ideas for the enforcement of muffler noise violations. A key issue of muffler violation enforcement is the relatively high impact on the quality of life and comparatively low fine imposed for such violations. The current fine for a violation of city ordinance 12-10-1.10, Mufflers Prevention of Noise, is \$25, regardless how many offenses are cited.

The attached bill increases the initial fine from \$25 to an amount not less than \$250 nor more than \$500.00 for the first violation and implements a fine of \$500 for successive violations.

ACTION REQUESTED:

The attached proposed ordinance has been reviewed and is supported by the administration of the Santa Fe Police Department. The request is for the Governing Body to adopt the attached bill as presented.

ATTACHMENTS:

Bill



City of Santa Fe, New Mexico

Memorandum



Fiscal Impact Report

Signature: *Kyra Ochoa*
Kyra Ochoa (Sep 12, 2022 14:36 MDT)

Email: krochoa@santafenm.gov

Signature: *Paul Joye*
Paul Joye (Sep 9, 2022 15:32 MDT)

Email: pmjoye@santafenm.gov

Signature: *matthew champlin*
matthew champlin (Sep 9, 2022 13:59 MDT)

Email: mrchamplin@santafenm.gov












Excessive Noise Penalties (Memo)


Final Audit Report

2022-09-12

Created:	2022-09-09
By:	Jeff Norris (jtnorris@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAXgSLH4KAee6AKuAwI9Xby_tbRgKpA0WN

"Excessive Noise Penalties (Memo)" History

-  Document created by Jeff Norris (jtnorris@ci.santa-fe.nm.us)
2022-09-09 - 4:54:44 PM GMT- IP address: 63.232.20.2
-  Document emailed to krochoa@santafenm.gov for signature
2022-09-09 - 4:55:25 PM GMT
-  Document emailed to pmjoye@santafenm.gov for signature
2022-09-09 - 4:55:25 PM GMT
-  Document emailed to mrchamplin@santafenm.gov for signature
2022-09-09 - 4:55:25 PM GMT
-  Email viewed by mrchamplin@santafenm.gov
2022-09-09 - 7:59:09 PM GMT- IP address: 104.47.65.254
-  Signer mrchamplin@santafenm.gov entered name at signing as matthew champlin
2022-09-09 - 7:59:41 PM GMT- IP address: 63.232.20.2
-  Document e-signed by matthew champlin (mrchamplin@santafenm.gov)
Signature Date: 2022-09-09 - 7:59:42 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Email viewed by pmjoye@santafenm.gov
2022-09-09 - 9:31:50 PM GMT- IP address: 63.232.20.2
-  Signer pmjoye@santafenm.gov entered name at signing as Paul Joye
2022-09-09 - 9:32:24 PM GMT- IP address: 63.232.20.2
-  Document e-signed by Paul Joye (pmjoye@santafenm.gov)
Signature Date: 2022-09-09 - 9:32:26 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Email viewed by krochoa@santafenm.gov
2022-09-12 - 3:07:25 PM GMT- IP address: 104.47.64.254

 Signer krochoa@santafenm.gov entered name at signing as Kyra Ochoa

2022-09-12 - 8:36:13 PM GMT- IP address: 63.232.20.2

 Document e-signed by Kyra Ochoa (krochoa@santafenm.gov)

Signature Date: 2022-09-12 - 8:36:15 PM GMT - Time Source: server- IP address: 63.232.20.2

 Agreement completed.

2022-09-12 - 8:36:15 PM GMT

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CITY OF SANTA FE, NEW MEXICO

BILL NO. 2022-__

INTRODUCED BY:

Councilor Signe Lindell

Mayor Alan Webber

Councilor Amanda Chavez

AN ORDINANCE

AMENDING SECTION 12-10-1.10 OF THE UNIFORM TRAFFIC ORDINANCE GOVERNING MUFFLERS AND EMISSION CONTROL DEVICES; AND AMENDING SCHEDULE A OF THE UNIFORM TRAFFIC ORDINANCE TO INCREASE PENALTIES FOR MUFFLER NOISE VIOLATIONS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

Section 1. Section 12-10-1.10 of SFCC 1987 (being Ord. 2021-2, § 16 as amended)

A. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise, and no person shall use a muffler cutout, muffler bypass, straight-through mufflers that do not contain baffles (including but not limited to glass packs, steel packs, and straight pipes), or similar device upon a motor vehicle on a street in this municipality.

B. The muffler, emission control equipment or device, engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive

1 fumes or smoke.

2 ~~[C. Every registered gasoline fueled motor vehicle manufactured or assembled,~~
3 ~~commencing with the 1968 models, shall at all times be equipped and maintained in good working~~
4 ~~order with the factory installed devices and equipment or their replacements designed to prevent,~~
5 ~~reduce or control exhaust emissions or air pollution. (66-3-844 NMSA 1978)]~~

6 D. Muffler changes or modification. No person shall sell, offer for sale, install or
7 offer to install, modify or change the exhaust muffler, intake muffler, or any other noise abatement
8 device of a motor vehicle in a way that increases or tends to increase the exhaust fumes, smoke, or
9 noise from a motor vehicle. Such prohibited changes or modifications shall include, but not be
10 limited to cut-outs, by-passes, and straight-through mufflers that do not contain baffles (including
11 but not limited to glass packs, steel packs, and straight pipes).

12 **Section 2. Schedule A of the Uniform Traffic Ordinance (being Ord. No. 2006-**
13 **34, as amended) is amended to read:**

14 **SCHEDULE A**

15 **TRAFFIC VIOLATION PENALTY ASSESSMENT SCHEDULE**

16 ADOPTED: July 12, 2006 - Ord. No. 2006-34

17 AMENDED: March 25, 2009 - Ord. No. 2009-11

18 February 10, 2010 - Ord. No. 2010-2

19 June 29, 2011 - Ord. No. 2011-23

20 August 13, 2014 - Ord. No. 2014-26

21 February 24, 2021 - Ord. No. 2021-2

22 **SECTION 2.**

1 A. "Penalty assessment misdemeanor" means violation of the following listed
2 sections of the city of Santa Fe Uniform Traffic Code for which the listed penalty assessment is
3 established. The term "penalty assessment misdemeanor" does not include any violation which
4 has caused or contributed to the cause of an accident resulting in injury or death to any person.
5 When an alleged violator of a penalty assessment misdemeanor elects to accept a notice to appear
6 in lieu of a notice of penalty assessment, the fine imposed upon later conviction shall not exceed
7 the penalty assessment established for the particular penalty assessment misdemeanor and
8 probation imposed upon a suspended or deferred sentence shall not exceed ninety days. (Ord. No.
9 2021-2, § 24)

COMMON NAME OF OFFENSE	SECTION VIOLATED	PENALTY ASSESSMENT
Obedience To Traffic-Control Devices/Failure To Stop	12-5-3	\$25.00
Red Light	12-5-6	\$25.00
Pedestrian Controls	12-5-7	\$25.00
Flashing Signals	12-5-8	\$25.00
Display of Unauthorized Signs, Signals, or Markings	12-5-10	\$25.00
Basic (Speeding) Rule	12-6-1.1	\$25.00
Speed Limits	12-6-1.2	
A. The following apply outside a school zone:		
Up to and including 10 miles an hour over speed limit		\$15.00
From 11 up to and including 15 miles an hour over speed limit		\$30.00

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

From 16 up to and including 20 miles an hour over speed limit		\$65.00
From 21 up to and including 25 miles an hour over speed limit		\$100.00
From 26 up to and including 30 miles an hour over the speed limit		\$125.00
From 31 up to and including 35 miles an hour over the speed limit		\$150.00
More than 35 miles an hour over the speed limit		\$200.00
B. In a school zone	12-6-1.2A	\$171.00
C. In a construction zone: The penalty assessment for speeding in violation of Section 12-6-1.2 (4) of the city of Santa Fe traffic ordinance is twice the penalty assessment established in subsection A above for the equivalent miles per hour over the speed limit		
D. In a pedestrian zone. The penalty assessment for speeding in violation of the posted speed limit in a designated pedestrian zone is twice the penalty assessment established in subsection A. above for the equivalent miles per hour over the speed limit.		
Minimum Speed Regulations	12-6-1.5	\$25.00
Driving On Right Side Of Street	12-6-2.1	\$25.00
Overtaking A Vehicle On The Left	12-6-2.3	\$25.00
Limitations On Overtaking On The Left	12-6-2.4	\$25.00
Overtaking A Vehicle On The Right	12-6-2.6	\$25.00
No Passing Zones/Restrictions On Passing	12-6-2.7	\$25.00
Streets Laned For Traffic	12-6-2.12	\$25.00

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Following Too Closely	12-6-2.13	\$25.00
Driving On Divided Streets	12-6-2.14	\$25.00
Driving Vehicle On Or Across Bicycle Lane Or Path.	12-6-2.17	\$25.00
Turning Left At Intersection	12-6-4.2	\$25.00
Entering Stop/Yield Intersection/Failure To Yield	12-6-4.3	\$25.00
Required Position/Method of Turning/Improper Turn	12-6-5.1	\$25.00
Obedience To No-Turn Signs	12-6-5.4	\$25.00
Limitations On Turning Around/Illegal U-Turn	12-6-5.5	\$25.00
Starting A Parked Vehicle	12-6-5.7	\$25.00
Turn/Stop Movements	12-6-5.8	\$25.00
Failure To Signal	12-6-5.9	\$25.00
Motorist Turning Across Bicycle Lane.	12-6-5.11	\$25.00
Stopping, Standing & Parking	12-6-6	See Exhibit B
Special Stops Required	12-6-7 (Excluding 12-6-7.3, 12-6-7.4, 12-6-7.5 and 12-6-7.7)	\$25.00
Stopping For School Bus	12-6-7.3	\$100.00

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Failure To Stop At Railroad Crossing	12-6-7.5 and 12-6-7.7	\$150.00
Operators and Chauffeurs Must Be Licensed	12-6-12.5	\$25.00
Driving While License Suspended/Administratively Suspended	12-6-12.6 and 12-6-12.6A	\$25.00
Driving While License Revoked	12-6-12.6B	\$300-\$500
Unattended Motor Vehicle	12-6-12.8	\$25.00
Limitations On Backing	12-6-12.9	\$25.00
Restriction On Use of Video In Motor Vehicles	12-6-12.11	\$25.00
Coasting Prohibited	12-6-12.12	\$25.00
Prohibited Activities While Driving (including handheld mobile communication device use)	12-6-12.18	\$200.00
Mobile communication device use while driving in a school zone	12-6-12.18	\$300.00
Permitting Unauthorized Persons To Drive	12-6-12.23	\$25.00
Destructive Material On Roadway/Failure To Secure Load	12-6-13.5	\$100.00
Improper Opening Of Doors	12-6-13.8	\$25.00
Child Restraint Device Or Safety Belt	12-6-13.12	\$100.00
Mandatory Use Of Seat Belts	12-6-13.13	\$100.00
Open Container, 1 st Offense	12-6-13.14	\$100.00
for subsequent violations		mandatory court appearance

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25


Littering	12-6-13.15	\$300.00
Jaywalking	12-6-14.1 through 12-6- 14.8	\$25.00
Windshield	12-10-1.12	\$25.00
When Lighted Lamps Are Required	12-10-1.3	\$25.00
Headlamps On Vehicles	12-10-1.5	\$25.00
Dimming Of Lights	12-10-1.6	\$25.00
Tail Lamps	12-10-1.7, except 12-10-1.7C	\$25.00
Plate Light Required	12-10-1.7C.	\$10.00
Stop Lamps/Brake Lamps	12-10-1.9	\$25.00
Mufflers, Prevention of Noise, 1 st Offense	12-10-1.10	[\$25.00] <u>Minimum \$250</u> <u>not to exceed</u> <u>\$500.00</u>
<u>for subsequent offenses</u>		<u>\$500.00</u>
Lamp Or Flag On Projecting Load	12-10-1.11	\$25.00
Windshield Must Be Unobstructed and Equipped with Wipers and Windows Must Be Transparent	12-10-1.12	\$25.00
Tinted Windows	12-10-1.12A	\$25.00
Unsafe Equipment (Brakes)	12-10-1.16	\$25.00

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Display of Current Valid Registration Plate	12-10-4	\$25.00
---	---------	---------

PASSED, APPROVED, and ADOPTED this _____ day of _____, 2022.

APPROVED AS TO FORM:


Erin McSherry (Sep 7, 2022 23:10 MDT)

ERIN K. McSHERRY, CITY ATTORNEY

FISCAL IMPACT REPORT

General Information:

(Check) **Bill:** X **Resolution:** _____

Short Title(s): Excessive Noise Penalties

Sponsor(s): Councilor Lindell

Reviewing Department(s): Police Department

Staff Completing FIR: Matthew Champlin **Date:** 09/06/2022 Phone: 955-5201

Reviewed by City Attorney:  **Date:** Sep 7, 2022
Erin M. Sienko (Sep 7, 2022 23:10 MDT)

Reviewed by Finance Director:  **Date:** Sep 8, 2022
Emily K. Oster (Sep 8, 2022 22:02 MDT)

Summary:

The proposed ordinance amends Section 12-10-1.10 of the Uniform Traffic Ordinance (“UTO”) to specify that modifying or offering to modify a muffler or similar devices in a way that increases the noise, fumes, or smoke exhaust of a vehicle is a violation of the section. It also prohibits persons from selling or offering to install devices that tend to increase the noise, fumes, or smoke from a vehicle. Additionally, the bill amends Schedule A of the UTO to increase the penalties for muffler noise violations (12-10-1.10) and implements a graduated scale of increasing fine amounts for successive offenses.

Departments Affected:

Police Department, Municipal Court, and City Attorney’s Office

Consequences of Not Enacting Legislation:

If the proposed legislation is not adopted, the City will continue to impose a low fine for noise violations and will not have a basis to cite persons who install or sell modifications that increase noise, fumes, or exhaust. The current \$25.00 fine has proven to be ineffective.

Conflict, Duplication, Companionship, or Relationship to Other Legislation:

None identified.

Performance and Administrative Implications:

This bill may result in additional time required of police officers to inspect vehicles for illegal modifications and to investigate an installer who is believed to be selling, installing, or modifying mufflers in violation of this ordinance.

Fiscal Implications:

The Santa Fe Police Department issues approximately 30 muffler violation citations per year, generating approximately \$750.00 per year to the General Fund. If citation numbers remain the same, then the potential impact for first time violation fines collected at the maximum proposed fine of \$500.00 would be an increase of \$15,000.00 on average per year. Subsequent offenses data was not available to calculate the successive violations fiscal impact increase. New language that makes it a violation to sell, install, or modify devices that increase the exhaust, smoke, or noise from the vehicle may result in additional fines issued by the Police Department.

Fiscal Impact

_____ Check here if no fiscal impact

Expenditures

Expenditure Type	FYE __	FYE __	FYE __	Require BAR (Y/N)	Recurring (R) or Non-recurring (NR)	Fund	3-Year Total Cost
<u>Personnel and</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Benefits*</u>							
<u>Capital Outlay</u>	\$ _____	\$ _____	\$ _____	_____	_____	_____	
<u>Contractual/</u>	\$ _____	\$ _____	\$ _____		_____	_____	
<u>Professional Services</u>							
<u>Operating</u>	\$ _____	\$ _____	\$ _____		_____	_____	\$ _____
<u>Total:</u>	\$ _____	\$ _____	\$ _____				\$ _____

* This includes all staff time associated with executing the job functions of the proposed legislation.

Expenditure Narrative:

None identified.

Revenue

Revenue Type	FYE 23	FYE 24	FYE 25	Recurring (R) or Non-recurring (NR)	Fund
General Fund	\$7,500	\$15,000	\$15,000	_____	_____
Special Revenue	\$ _____	\$ _____	\$ _____	_____	_____
CIP	\$ _____	\$ _____	\$ _____	_____	_____
Enterprise	\$ _____	\$ _____	\$ _____	_____	_____
Internal Service	\$ _____	\$ _____	\$ _____	_____	_____
Trust and Agency	\$ _____	\$ _____	\$ _____	_____	_____
Federal	\$ _____	\$ _____	\$ _____	_____	_____
Other	\$ _____	\$ _____	\$ _____	_____	_____
Total	\$7,500	\$15,000	\$15,000		

Revenue Narrative:

The projected revenue is based on the Police Department issuing the same number of average tickets per year that result in the highest possible fine of \$500.

Signature: *Paul Joye*
Paul Joye (Sep 8, 2022 16:50 MDT)

Email: pmjoye@santafenm.gov

Signature: *Matthew Champlin*
Matthew Champlin (Sep 7, 2022 18:18 MDT)

Email: mrchamplin@santafenm.gov