

1 **CITY OF SANTA FE, NEW MEXICO**

2 **RESOLUTION NO. 2014-78**

3 **INTRODUCED BY:**

4  
5 Councilor Ron Trujillo

6 Councilor Chris Rivera

7 Councilor Peter Ives

8  
9  
10 **A RESOLUTION**

11 **SUPPORTING THE NEW MEXICO LITTER CONTROL AND BEAUTIFICATION ACT OF**  
12 **1985 WHICH PROVIDES PUBLIC FUNDS IN THE FORM OF GRANTS FOR THE**  
13 **PURPOSE OF ENHANCING LOCAL LITTER CONTROL AND BEAUTIFICATION**  
14 **PROGRAMS.**

15  
16 **WHEREAS**, the city of Santa Fe recognizes the existence of a litter problem within the  
17 boundaries of Santa Fe; and

18 **WHEREAS**, the New Mexico Litter Control & Beautification Act of 1985 (the "ACT")  
19 provides, through the State Tourism Department, Litter Control and Beautification Section, for the  
20 allocation of public funds in the form of grants for the purpose of enhancing local litter control and  
21 beautification programs; and

22 **WHEREAS**, the city of Santa Fe has reviewed and considered the regulations, the agreement  
23 covering administration and use of said funds.

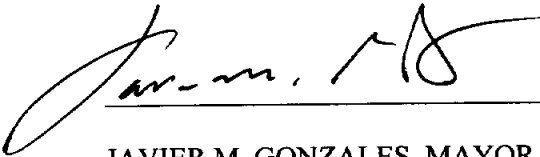
24 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
25 **CITY OF SANTA FE** that the city of Santa Fe:

1           **Section 1.** Endorses and supports such a program and delegates the administration of such  
2 program to Keep Santa Fe Beautiful, as indicated in Exhibit "A" attached hereto and incorporated  
3 herein by reference.

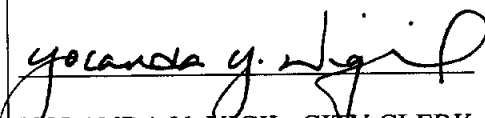
4           **Section 2.** Authorizes City of Santa Fe, Keep Santa Fe Beautiful program to plan, budget and  
5 apply for a grant under the ACT which if approved, will be used to fund said programs.

6           **Section 3.** Requests the State Tourism Department, Litter Control Beautification Section to  
7 consider and approve said application and program. Said program is in accordance with the Act and  
8 related regulations governing the use and expenditure of said funds.


9           PASSED, APPROVED and ADOPTED this 23<sup>rd</sup> day of September, 2014.

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11   
12 \_\_\_\_\_  
13 JAVIER M. GONZALES, MAYOR

13 ATTEST:

14  
15   
16 \_\_\_\_\_  
17 YOLANDA Y. VIGIL, CITY CLERK

18 APPROVED AS TO FORM:

19  
20   
21 \_\_\_\_\_  
22 KELLEY A. BRENNAN, CITY ATTORNEY

**LITTER CONTROL & BEAUTIFICATION  
GRANT AGREEMENT**

THIS AGREEMENT, made and entered into on the date of last signature by a party below, is by and between the STATE OF NEW MEXICO, NEW MEXICO TOURISM DEPARTMENT, hereinafter referred to as "Department" and the City of Santa Fe, hereinafter referred to as "Public Entity".

**RECITALS**

WHEREAS, the purpose of the "New Mexico Litter Control and Beautification Act," NMSA 1978, §§ 67-16-1 to -14 (1985, as amended through 2001), hereinafter referred to as the "Act," is to control litter by authorizing Department to eliminate litter from the State to the maximum practical extent through a State-coordinated plan of education, control, prevention, and elimination;

WHEREAS, Section 67-16-12 (B) (3) of the Act provides that Department may allocate up to fifty percent (50%) of the funds generated annually by the Act to local governments to establish and sustain local keep America beautiful system programs;

WHEREAS, Section 67-16-12 (B) (4) of the Act provides that Department may allocate up to sixty percent (60%) of fees generated annual to local governments to establish a youth employment program to aid in litter control and beautification projects;

WHEREAS, Public Entity is a local government as defined under the Act; and

WHEREAS, the parties hereto intend to fulfill the requirements of the Act through this Agreement.

NOW, THEREFORE, in consideration of the covenants contained herein and pursuant to the Act, the parties agree as follows:

**SECTION ONE – THE DEPARTMENT AGREES TO:**

Upon its approval of the Public Entity’s grant application for program resources funds and/or youth employment funds:

1. Allocate funds generated by the Act and pay to Public Entity an amount not to exceed the sum of \$ **45,150.00** (the "Funds") for Public Entity to establish or sustain a local Keep America Beautiful system program, pursuant to Section 67-16-12(B)(3) of the Act; and/or to fund a youth employment program to aid in litter control and beautification projects pursuant to Section 67-16-12(B)(4) of the Act; and as stipulated by the attached Exhibit 1, Grant Award Distribution, which is incorporated herein.



2. Not reimburse the Public Entity more than fifty percent (50%) of the Funds during the first half of the fiscal year in which this Agreement is executed.

3. Reimburse funds on a quarterly basis. For the purpose of this Agreement, quarters are designated as: July through September; October through December; January through March; and April through June.

4. Review the Public Entity's written requests to reallocate funds from the program resources allocation to the youth employment allocation, based on the Public Entity's need to support local youth interests.

5. Review the Public Entity's written requests to reallocate funds from the youth employment allocation to the program resources allocation, based on the Public Entity's need to implement programs and projects.

6. Amend the Public Entity's budget if the Department approves a request to amend in writing.

## **SECTION TWO - PUBLIC ENTITY AGREES TO:**

1. Perform and complete the Litter Control, Graffiti, Beautification, Recycling, and related community programs and tasks as in furtherance of the statewide keep America beautiful system programs, pursuant to the Act, and as further set forth in Exhibit 1 attached hereto, which is hereby incorporated herein by this reference and made a part of this Agreement as though set forth herein in full.

2. Spend the funds allocated herein as required by, and according to, the provisions of the Act and the applicable rules and regulations of the Department.

3. **Mail reimbursement requests postmarked on or before the tenth (10th) calendar day after the end of each quarter, EXCEPT FOR THE FOURTH QUARTER. Public Entity must submit its final requests for reimbursement for the fourth quarter postmarked no later than June tenth (10th), except for request on reimbursement for Youth Employment, which Public Entity may submit postmarked as late as July tenth (10th).**

4. Include *at least* the following in its requests for reimbursement to Department:
- a. A detailed accounting of expenditures of all funds allocated and paid herein by line item;
  - b. Copies of detailed Public Entity purchase documents, receipts and proof of payment for equipment, materials, or supplies purchased, (including model and serial numbers, if any) necessary to perform the programs;
  - c. Copies of the payroll for youth employees; and
  - d. Such other information as may be required by Department.

7. Expend funds allocated under this agreement on equipment, projects, promotional programs, services, and other matters, only if they are related to litter prevention, elimination, control programs, and beautification.

8. Make reallocation requests in writing to Department.

9. Keep accounting records for the Litter Control, Graffiti, Beautification, Recycling, and related community programs and submit an accounting and performance report to Department with its final request for reimbursement.

10. Include at least the following in its performance report:

- a. An accounting of expenditures of all funds allocated and paid herein by line item;
- b. A certification that Public Entity used purchased equipment only for the purpose of fulfilling this Agreement under the Act and for no other purpose;
- c. A detailed summary of accomplishments towards the objectives and goals of the program;
- d. Any other information necessary to explain the program accomplishments; and
- e. Such other information as may be required by Department.

11. Use equipment purchased in whole or part with funds allocated and paid under this Agreement only for the anti-litter and beautification purposes required by the Act.

12. Not assign or transfer any interest in this Agreement and shall not assign any claims or money due or that may become due under this Agreement.

13. Not subcontract any portion of the services to be performed, or programs to be fulfilled and accomplished, or consultants to be hired, under this Agreement without prior written approval of Department.

14. Maintain detailed records documenting the date, time, and nature of services rendered and the progress of programs undertaken and understands that these records shall be subject to inspection by Department, the Department of Finance and Administration, and the New Mexico State Auditor. Department shall have the right to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the Department to recover excessive illegal payment.

15. Not currently have and not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance or service required of it under this Agreement.

16. Release Department, its officers, and employees, and the State of New Mexico as provided for by law from all liabilities, claims and obligations whatsoever arising from or under this Agreement upon final payment of the amount due under this Agreement.

17. Not purport to bind the State of New Mexico to any obligation not assumed herein, unless Public Entity has written authority to do so, and then only within the strict limits

of that authority.

**SECTION THREE – BOTH PARTIES AGREE THAT:**

1. They will strictly adhere to the requirements set forth in Department's Litter Control and Beautification Grant Requirements Rule (as amended) for grant approval, allocation, and reporting.

2. The Department will not disburse grant monies until Public Entity submits proper written documentation of its expenditures.

3. The Public Entity's requests for reallocation of funds are not valid without Department's prior written approval and that reallocations of funds do not require a formal amendment to this Agreement, provided Department does not increase Public Entity's allocation.

4. The Public Entity's illegal or unauthorized expenditures under this agreement shall constitute a debt to the State of New Mexico, owed by Public Entity, its successors, or assigns. In the case of such debt, parties agree that Department may elect to withhold or recover allocations from Public Entity, its successors, or assignees by appropriate legal action.

5. Direct costs of travel or per diem incurred by Public Entity shall be the sole responsibility of Public Entity, unless Public Entity proposes and requests direct and separate travel reimbursement and the Department gives advance approval in writing.

6. Equipment purchased through the grant described in this Agreement that has a service life longer than this Agreement shall be used for agreement purposes for the length of that equipment's service life. Before the Department reimburses the Public Entity's expenses for such equipment purchased for more than five hundred dollars (\$500.00), the parties shall agree and specify its expected service life based on the kind of equipment, amount of anticipated use, service that will be performed, and the equipment's normal service life.

7. The Public Entity's failure to submit reimbursement requests postmarked on or before the dates outlined in SECTION TWO for the first three quarters will result in a penalty assessed on the invoice equal to ten percent (10%) of the total invoice submitted for that quarter. **PUBLIC ENTITIES' REQUESTS POSTMARKED AFTER THE FOURTH QUARTER DEADLINES OUTLINED IN SECTION TWO WILL NOT BE PAID.**

8. The Public Entity's records, detailing date, time, and nature of services rendered and the progress of programs undertaken shall be subject to inspection by Department, the Department of Finance and Administration, and the New Mexico State Auditor and the Department shall have the right to audit billings both before and after payment.

9. Payment under this Agreement shall not foreclose the right of Department to recover excessive illegal payment.

**SECTION FOUR – AMENDMENT:**

This Agreement shall not be altered, changed or amended except by a written instrument, executed by both parties.

**SECTION FIVE – DEPARTMENT’S AUTHORIZATION OF EXPENDITURES:**

Department reserves the right to terminate this Agreement if funds appropriated by the Legislature are insufficient to fulfill its obligations under this Agreement. The Department’s decision as to whether funds under the Act are sufficient for fulfillment of this Agreement shall be final.

**SECTION SIX – INDEPENDENT CONTRACTOR:**

Public Entity and its agents and employees are independent contractors fulfilling their obligations to Department under this Agreement and are not employees of the State of New Mexico. Public Entity and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to the employees of the State of New Mexico as a result of this Agreement.

**SECTION SEVEN – TERM and TERMINATION:**

1. This Agreement shall not take effect until executed by the parties hereto. This Agreement shall terminate on **June 30, 2015**, unless terminated pursuant to the following paragraphs of this SECTION.

2. Department may terminate this Agreement if Public Entity fails to commence program activities by the end of the second quarter of the fiscal year or if Public Entity does not comply with restrictions on its expenditures.

3. Either party may cancel this Agreement with thirty (30) days written notice to the other party. By such termination, neither party may nullify obligations already incurred for performance or failure to perform for the programs rendered prior to the date of termination of the Agreement. However, neither party shall have any obligation to perform services or make payment for services or specified programs rendered after such date of termination.

**SECTION EIGHT – INTEGRATION:**

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreements or understanding, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**SECTION NINE – PUBLIC ENTITY’S ACQUIRED PROPERTY:**

If upon termination or expiration of this Agreement Public Entity has any property acquired pursuant to this Agreement, then Public Entity shall only dispose of it as directed by Department.

**SECTION TEN – CONTROLLING LAW:**

The laws of the State of New Mexico shall govern this Agreement. The parties agree that the District Courts of the State of New Mexico have jurisdiction over any lawsuits brought by either party to enforce its rights hereunder. Venue shall be in Santa Fe County, New Mexico.

**SECTION ELEVEN – UNEXPENDED AND UNENCUMBERED PROJECT BALANCES:**

Any unexpended or unencumbered balance allocated by Department under this Agreement shall revert to Department.

**SECTION TWELVE – INTENT OF AGREEMENT:**

This Agreement is not intended by any of the provisions or any part of the Agreement to create in the public, or any member thereof, a third party beneficiary; nor is it intended to authorize anyone not a party to this Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury, damage(s) to property(ties), and/or any other claims(s) whatsoever pursuant to the provisions of this Agreement.

**SECTION THIRTEEN – NEW MEXICO TORT CLAIMS ACT:**

By entering into this Agreement, neither party shall be responsible for liability incurred as a result of the other party’s acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 to -14 (1985, as amended through 2002). This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties’ liabilities as governed by common law or the New Mexico Tort Claims Act. Public Entity and its “public employees,” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defenses, and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provisions of the New Mexico Tort Claims Act.

**SECTION FOURTEEN – ACCOUNTABILITY OF RECEIPTS & DISBURSEMENTS:**

There shall be strict accountability for all receipts and disbursements relating hereto.

**SECTION FIFTEEN – EQUAL OPPORTUNITY COMPLIANCE:**

Public Entity agrees to abide by all federal and state laws, rules, and regulations



pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, Public Entity agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If Public Entity is found to have failed to comply with these requirements during the term of this Agreement, Public Entity agrees to take appropriate steps to correct these deficiencies.

**SECTION SIXTEEN – CIVIL RIGHTS LAWS AND REGULATION COMPLIANCE:**

Department and Public Entity shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. Department and Public Entity further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, and the New Mexico Human Rights Act.

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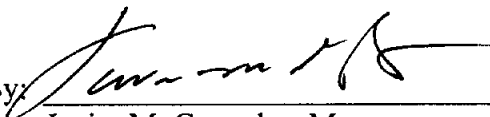
IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below specified.

New Mexico Tourism Department  
"DEPARTMENT"

By: \_\_\_\_\_  
Monique Jacobson, Cabinet Secretary

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

City of Santa Fe  
"PUBLIC ENTITY"

By:  \_\_\_\_\_  
Javier M. Gonzales, Mayor

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

As to form and legal sufficiency

By: \_\_\_\_\_  
Erin K. McSherry, Legal Counsel

Attest:

\_\_\_\_\_  
Yolanda Y. Vigil, City Clerk

Approved as to form:

MM      9/24/14  
\_\_\_\_\_  
Kelley A Brennan, City Attorney

Approved:

\_\_\_\_\_  
Teresita Garcia, Assistant Finance Director