

**REGULAR MEETING OF THE CITY COMMISSION  
MONDAY, AUGUST 8, 2016 @ 5:30 P.M.  
CITY COMMISSION CHAMBERS, 214 S. LOVE STREET**

**Call to Order:** The meeting was called to order by Mayor Campos at 5:30 p.m.

**Present and answering roll call:** Commissioner Gandy, Commissioner Trujillo, Commissioner Butcher (Phone Conference), Commissioner Sanchez, and Mayor Campos

**Also Present:** City Manager James Williams, City Attorney Patrick McMahon, Chief of Police David Rodriguez, Chief of Fire Terrance Lizardo, Public Works Director Wyatt Duncan, Finance Director Gary Chapman, Planning and Zoning Coordinator Crystal Ball, City Clerk Carol Ann Hogue, and Administrative Assistant Anna Juarez

**Invocation:** Commissioner Trujillo gave the invocation.

**Pledge of Allegiance:** Commissioner Trujillo led the pledge.

**Approval of Agenda:** Mayor Campos called for a motion. Commissioner Sanchez so moved to approve the agenda; Commissioner Gandy seconded. Motion carried unanimously.

**Approval of the Regular Meeting Minutes of July 25, 2016:** Mayor Campos called for a motion. Commissioner Gandy so moved to approve the regular meeting minutes of July 25, 2016; Commissioner Sanchez seconded. Motion carried unanimously.

**COMMISSIONER AND STAFF REPORTS:**

- Commissioner Butcher stated Commercial Street looks awesome.
- Commissioner Gandy asked City Manager to look at some streets lights on the north side of the road on Avenue L, before concrete is poured.
- Mayor Campos asked City Manager to thank the Ramirez and Son's for completing project on scheduled time.
- City Manager Williams updated Commissioners on:
  - Fair & Rodeo is on Wednesday, starts at 4:00 pm
  - NMML Conference will be held in Hobbs, August 31 – September 2, 2016; registrations will need to be turned in before August 12, 2016
  - Public town hall meetings for 2017-2021 ICIP, will be held City Hall Chamber on August 15 and 29 from 5:30 – 6:30 pm; meeting will be informal just to get comments from the public.
  - MVD will be closed tomorrow at noon and not re-open until Friday, so they can attend training in Las Cruces for a State mandated training

**PUBLIC COMMENT:**

Evelyn Holguin, Director of EDC, invited everyone to the Fair and Rodeo Parade on Wednesday at 4:00 pm.

**ACTION ITEMS:**

**Consider approval of Ordinance 545 – Amending Chapter 2.92 of the Lovington Municipal Code to include changes to hours worked definition and allowing a Section K exemption for the Police Department should municipal revenues decline:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider approval of Ordinance 545 – Amending Chapter 2.92 of the Lovington Municipal Code to include changes to hours worked definition and allowing a Section K exemption for the Police Department should municipal revenues decline; Commissioner Butcher seconded. City Manager Williams stated this Ordinance 545 has been discussed two meetings ago, which will amend the personnel code to allow the City Commission to enact a Section K exemption for the Police Department should municipal revenues decline. This action is identified in the Revenue Reduction Contingency Plan and will cause an estimated savings of over \$20,000 per year. This Ordinance has been advertised and is ready for final adoption by Commission. There being no further discussion; motion carried unanimously.

**Consider approval of Ordinance 546 – Amending Chapter 15.04 – Uniform Building code to adopt the most current New Mexico State Building Code by reference:** Mayor Campos called for a motion. Commissioner Gandy so moved to consider approval of Ordinance 546 – Amending Chapter 15.04 – Uniform Building code to adopt the most current New Mexico State Building Code by reference; Commissioner Trujillo seconded. City Manager Williams stated this Ordinance 546, previously discussed and advertised, will amend the Uniform Building Code section of the LMC; the amendment will allow the City to adopt the most current edition in use by the State of New Mexico. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Resolution 2016-67: Approval to extend sewer line within public utility easement in the area of 1<sup>st</sup> and Juniper:** Mayor Campos called for a motion. Commissioner Sanchez so moved to consider Resolution 2016-67: Approval to extend sewer line within public utility easement in the area of 1<sup>st</sup> and Juniper; Commissioner Butcher seconded. Public Works Director Duncan addressed Commissioners of owners of 4 residential lots located in the area of Juniper and 1<sup>st</sup> street are currently in need to connect to the public sewer system. However, the closest connection is well over 100 feet away on a dead end alley and until recently, public utility easements did not exist. All of the owners of the aforementioned properties have recorded public utility easements that will facilitate placement of a public sewer line. Public Works Director Duncan stated staff is requesting authorization from the City Commission to have the easement surveyed and staked; upon completion of the surveying, approximately 260 feet of sewer main will be installed. City Manager Williams stated funding will come out of utilities fund which has 67% reserves. Public Works Director stated this will be a utility

easement and timeframe for install will take about 4 days; water is already available to residents. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Resolution 2016-68: Approval of Change Order 6 for Commercial Street Project:** Mayor Campos called for a motion. Commissioner Butcher so moved to consider Resolution 2016-68: Approval of Change Order 6 for Commercial Street Project; Commissioner Trujillo seconded. Public Works Director Duncan addressed Commissioners after further review by staff, the project engineer has come to the conclusion that the complete filling in of the drainage ditches and culvert extensions on the Commercial Street project is more cost effective in the long term as compared to the drive pad widening only. Long term maintenance will cost less with this measure. In addition, this method will reduce erosion control and enhance public safety. Change order number 6 will delete Change Order No. 5 and increase this project \$13,082. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Award of RFP 2016FSD: Fire Station Engineering and Design Services:** Mayor Campos called for a motion. Commissioner Trujillo so moved to consider Award of RFP 2016FSD: Fire Station Engineering and Design Services; Commissioner Gandy seconded. Fire Chief Lizardo stated RFP 2016FSD was released in order to obtain engineering and design services for the second main Fire Station, which will house 4 personnel and 4 to 6 apparatus. Fire Chief Lizardo stated three responses were received and scored as such:

- Durham Mackay Architects: 132.00
- NPSR Architects, Inc.: 156.00
- WDG Architects: 162.75

Fire Chief Lizardo stated the City Staff is recommending award of this RFP to WDG Architects. City Manager Williams stated this project is evaluated by 4 staff personnel using the State procurement RFP template which is utilized to evaluate each response. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**Consider Approval of Accounts Payable:** Mayor Campos called for a motion. Commissioner Sanchez so moved to approve the accounts payable; Commissioner Gandy second. There being no further discussion, Mayor Campos called for a vote. Motion carried unanimously.

**CLOSED SESSION:**

At 5:49 p.m., Commissioner Trujillo moved to adjourn Regular Session and convene in Closed Session Pursuant to Section 10-15-1 NMSA 1978, Subsection H-8, regarding the purchase, acquisition, or disposition of real property – potential purchase of property for drainage, economic development, and quality of life. Commissioner Sanchez seconded and a roll call vote was taken: Commissioner Sanchez - Yes; Commissioner

Trujillo - Yes; Commissioner Gandy - Yes; Commissioner Butcher – Yes; and Mayor Campos - Yes.

At 6:17 p.m., Commissioner Gandy so moved to adjourn Closed Session and reconvene in Regular Session stating that matters discussed were limited only to those specified in the motion and no action was taken. Commissioner Sanchez seconded and a roll call vote was taken: Commissioner Gandy - Yes; Commissioner Sanchez - Yes; Commissioner Trujillo - Yes; Commissioner Butcher – Yes; and Mayor Campos - Yes.

**ADJOURNMENT:** There being no further business, Mayor Campos adjourned the meeting at 6:17 p.m.

**APPROVED:** \_\_\_\_\_  
**PAUL CAMPOS, MAYOR**

**ATTEST:** \_\_\_\_\_  
**CAROL ANN HOGUE, CITY CLERK**

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Keep Lovington Beautiful Affiliation  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 16, 2016

**STAFF SUMMARY:**

Keep Lovington Beautiful has requested time during the City Commission meeting for the official affiliation ceremony for their organization to take place.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

**RECOMMENDATION:**

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Approval of Ordinance 547  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 16, 2016

**STAFF SUMMARY:**

Ordinance 547 has been advertised as required and is ready for Commission adoption.

This ordinance will amend the City Clerk chapter of the City code by removing the treasurer language. A new chapter will be created (Treasurer) and will delegate those functions to the Finance Director.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Ordinance 547 (red line)

**RECOMMENDATION:**

Motion to approve Ordinance No. 547.

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

**ORDINANCE NO. 547**

**AN ORDINANCE OF THE CITY OF LOVINGTON, NEW MEXICO, AMENDING TITLE 2 ADMINISTRATION AND PERSONNEL, CHAPTER 2.20 CITY CLERK AND TREASURER AND CREATING A CHAPTER 2.25 TREASURER OF THE LOVINGTON MUNICIPAL CODE**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON, NEW MEXICO THAT TITLE 15, CHAPTER 2.20 BE AND HEREBY IS AMENDED AS FOLLOWS:

**CHAPTER 2.20 CITY CLERK ~~AND TREASURER~~**

Sections:

- ~~2.20.010~~ ~~Offices combined~~
- 2.20.020 Duties
- 2.20.030 Appointments of deputy clerks and treasurers

~~**2.20.010 Offices combined**~~

~~The offices of city clerk and treasurer are combined and one person shall be appointed to fill the combined offices. All powers and duties now imposed by the legislative acts and ordinances of the city shall not be affected and shall be in full force and effect as to the powers and duties of the person appointed to fill such combined offices.~~

**2.20.020 Duties**

~~A. The treasurer shall receive all monies belonging to the city and shall keep his books and accounts in such a manner as may be prescribed by ordinance. Such books and accounts shall always be subject to inspection by any member of the city commission. He shall keep a separate account of each fund or appropriation and the debts or credits belonging thereto. He shall give every person paying money into the treasury a receipt therefor, specifying the date of payment and upon what account paid, and he shall file statements of such receipts with the chairman of the finance committee at the date of each monthly report. He shall, at the end of each and every month, and more often if required, render an account to the city commission or such officer as may be designated by ordinance, showing the state of the treasury. He shall also accompany such accounts with a statement of all money received into the treasury and upon what account during the preceding month, together with all warrants redeemed and paid by him, which warrants, with any and all vouchers held by him, shall be delivered to the city commission at the next regular meeting. He shall keep a register of all warrants redeemed and paid, which shall describe such warrants and~~

~~show the date, amount, number, the fund from which paid, the name of the person to whom paid and when paid. He may be required to keep all money in his hands belonging to the city in such place of deposit as may be designated by ordinance. No such ordinance shall be passed by which the custody of such money shall be taken from the treasurer. The treasurer shall keep all money belonging to the city in his hands, separate and distinct from, his own money, and he is expressly prohibited from using either directly or indirectly the city money or warrants in his hands for his own use or benefit or that of any other person. Any violation of this section shall subject him to immediate removal from office by the city commission, which is authorized to declare such office vacant, and in which case his successor shall be appointed by the city manager and confirmed by the city commission and shall hold his office for the remainder of the unexpired term.~~

~~B. The treasurer shall report to the city commission and city manager, as often as required, a full and detailed account of all receipts and expenditures of the city as shown by his books up to the time of his reports. He shall annually, in the month of July, make out and file a full and detailed account of all such receipts and expenditures and all his transactions as treasurer during the preceding fiscal year.~~

~~C. All warrants drawn on the treasury must be signed by the mayor and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable. No money shall be drawn except as provided in this chapter. All money received on any special assessment shall be held by the treasurer as a special fund to be applied to the payment of the improvement for which the assessment was made and such money shall be used for no other purpose unless to reimburse the city for money spent for such improvements.~~

~~D. The treasurer shall have and keep in his office a book to be called the cash journal where shall be entered and set down every city warrant at the date of the presentation of such and without any interval or blank line between any such entry and the one preceding it. Such registry of city warrants shall be open at all reasonable hours to the inspection of any person desiring to inspect or examine such.~~

~~E. A. The city clerk shall record all proceedings of the city commission in a book provided for that purpose and shall record all ordinances in the ordinance book and all resolutions in the book to be known as the resolution book. He **The city clerk** shall countersign all warrants drawn on the treasurer under the city seal. He **The city clerk** shall make out all licenses to be issued under the ordinances of the city and countersign the same under the city seal. Before issuing any license, he **the city clerk** shall present such to the city~~

manager for his signature and approval. ~~He~~ **The city clerk** shall keep a full and complete record of warrants and licenses, with the names of the parties to whom issued, including dates, amounts and numbers and the purpose for which issued. The city clerk shall, on the first day of each month or as soon thereafter as the city manager may require, prepare a full and complete report of all warrants and licenses issued and of all money collected belonging to the city and of all other transactions of ~~his~~ **their** office during the month preceding such report, and shall submit such to the city commission at its first regular meeting in each month. ~~He~~ **The city clerk** shall be the keeper of the city seal and shall affix the seal to all instructions which are required to be attested by the city seal. ~~He~~ **The city clerk** shall have the custody of and safely keep all records and documents of the city except as otherwise provided by law. In addition to the duties above enumerated ~~he~~ **the city clerk** shall perform such other duties as may be enjoined upon him **or her** by the ordinances of the city.

**2.20.030 Appointments of deputy clerks. ~~and treasurers.~~**

It is lawful for the city manager to appoint, by and with the consent of the city commission, deputy city clerks ~~and treasurers~~ who shall perform such of the duties of the office as may be directed by the city manager and shall have the full powers of deputy clerks ~~and treasurers~~. The city clerk ~~and treasurer~~ shall be responsible to the city for the actions of the deputies and may require of such deputies a bond in such sum as may be fixed by the city commission payable to the clerk ~~and treasurer~~ and conditioned upon the faithful performance of the deputies duties.

**FURTHERMORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON, NEW MEXICO THAT TITLE 15, CHAPTER 2.25 TREASURER BE AND HEREBY IS CREATED AS FOLLOWS:**

**CHAPTER 2.25 TREASURER**

Sections:

- |          |                                   |
|----------|-----------------------------------|
| 2.25.010 | Duties                            |
| 2.25.020 | Records open to inspection        |
| 2.25.030 | Appointments of deputy treasurers |

**2.25.010 Duties.**

- A. **The treasurer shall be the finance officer for the municipality unless another officer is directed by ordinance to be the finance officer. The finance officer shall be employed and discharged by the city manager subject to the approval of the city commission. The finance officer shall:**

1. Receive all money belonging to the municipality;
2. keep accounts and records in the manner prescribed by the city commission;
3. keep the money of the municipality separate from any other money in his or her possession;
4. expend the money only as directed by the city commission;
5. submit monthly, or as often as required by the city commission and city manager a report of the receipts and expenditures of the municipality;
6. prepare annually, at the close of the fiscal year, a financial report showing the receipts, expenditures and balances for each fund. A copy of the financial report shall be filed in the office of the city clerk as a public document;
7. supervise the depositing and safekeeping of all money belonging to the municipality; and
8. serve as the chief procurement officer of the municipality;
9. with the direction of the city commission designate banks qualified to receive on deposit money entrusted to his or her care.

**2.25.020      Records open to inspection**

The records of the finance officer shall be open to inspection by any citizen during the regular business hours of the municipality.

**2.25.030      Appointments of deputy treasurers**

It is lawful for the city manager to appoint, by and with the consent of the city commission, deputy city treasurers who shall perform such of the duties of the office as may be directed by the city manager and shall have the full powers of deputy treasurers. The treasurer shall be responsible to the city for the actions of the deputies and may require of such deputies a bond in such sum as may be fixed by the city commission payable to the treasurer and conditioned upon the faithful performance of the deputies duties.

**PASSED, ADOPTED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016**

CITY OF LOVINGTON

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Paul Campos, Mayor

ATTEST:

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Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-69: Athletic Field Policy  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 16, 2016

**STAFF SUMMARY:**

Resolution 2016-69 will formally adopt the proposed Athletic Field Use Policy by the City of Lovington. This policy addresses the process to be utilized for reserving the fields for organized league or group play, establishes a deposit and rules to be followed when using the fields. This policy was presented to Commission at the July 11, 2016 meeting for discussion. After the meeting, copies were provided to each of the various league organizers or officers. No further comment has been received by City staff.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Resolution 2016-69  
Athletic Field Use Policy

**RECOMMENDATION:**

Motion to approve Resolution 2016-69

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-69**

**A RESOLUTION APPROVING THE ADOPTION AND IMPLEMENTATION OF A CITY  
ATHLETIC FIELD USE POLICY**

**WHEREAS**, City owns, operates and maintains various athletic fields within the municipality; and

**WHEREAS**, a policy is required to ensure that a consistent reservation procedure is adhered to; and

**WHEREAS**, a policy is required to establish rules to be followed by organizers and patrons to ensure compliance with all rules, regulations, laws, and safety standards; and

**WHEREAS**, this policy has been reviewed by the Lovington Parks and Recreation Board and was given a recommendation for approval.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission approves the submitted Athletic Field Use Policy, attached hereto for reference, and declares it effective upon approval of this Resolution.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

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Paul Campos, Mayor

ATTEST:

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Carol Ann Hogue, City Clerk

**I. Policy Statement:**

The City of Lovington provides athletic fields for use by its citizens and for organized league play. It is the intent of this policy to establish use regulations, application for use permits, and scheduling procedures to accommodate groups that wish to use these facilities. A facility use permit may be revoked for violation of this policy or any local, state, or federal code, ordinance, or law. Permits shall not be transferred, assigned, or sub-let.

**II. Definition of Terms**

Resident: defined as an individual participant that resides within the Lovington City limits or within the Lovington Extraterritorial Zone.

Youth: defined as persons 18 years of age or under.

Non-profit: To qualify as a non-profit user, the organization must meet all the criteria below:

1. The organization must be registered as a not-for-profit corporation with the State of New Mexico, or if not registered with the State, must have a constitution, bylaws or mission statement which clearly state the objectives of the organization are of a non-profit, non-commercial nature.
2. The organization must be comprised of volunteers, (75%) of which must be Lovington residents. The organization must submit the following:
  - a. If incorporated, submit State Incorporation papers and bylaws; if not incorporated, submit constitution and bylaws or mission statement.
  - b. Current financial statement
  - c. Roster of Officers
  - d. List of persons authorized to make reservations for your organization; must be Lovington residents.

**III. Priority Group Qualification**

Due to the limited number of fields and facilities available, the City of Lovington has established a priority use.

Priority use of fields/facilities will be allocated as follows:

- GROUP 1: City sponsored or co-sponsored events.
- GROUP 2: Non-profit youth programs, organizations, or events with 75% Lovington residents (i.e. organized youth league play)
- GROUP 3: Non-profit adult programs, organizations, or events with 75% Lovington residents (organized adult league play)
- GROUP 4: Youth programs, organizations, or events

GROUP 5: Adult programs, organizations, or events

#### IV. Process for Obtaining Permits

##### Application and Agreement

Each organization is required to sign and submit an Athletic Field Use Rules and Regulations for on Page 6, Application and Agreement Request for Use of City of Lovington Facilities on Page 7, and Hold Harmless and Indemnity Agreement form on Page 8 and provide proof of insurance one month in advance of starting use of the facility. A statement certifying the residency of players must be submitted to the City no later than one week following the organization registration date.

Multiple-use reservations may be made for more than one date or with recurring weekly use. Any person or organization missing any deadlines will have access to any remaining fields/facilities after the allocation process is finalized on a first come first served basis. Submission of a request does not constitute approval. Approval is given according to allocation policy, after fees are paid, and when a permit is issued. Every effort will be made to accommodate user group's use of fields.

##### Permit Procedures

Requests to permit the use of City fields and facilities in Lovington are made through City Hall, 214 S. Love Street, Lovington, NM 88260 (575) 396-2884. Individuals desiring to utilize the athletic fields but are not part of an organization, program, or league may do so without having a permit, however, if the facility is in use by a permitted user during their reserved time, they are not allowed the use of the facility.

Game and practice schedules are required to be submitted and will be used by City staff to ensure fields are being used as allocated. If fields and facilities are not used as requested, permits may be rescinded. Groups or organizations not using fields and facilities as stated may lose their permit and/or priority allocation consideration for future allocations.

##### Liability Insurance Requirements

The facility user shall secure and maintain throughout the period of use contemplated under this agreement, general liability insurance with policy limits of not less than \$1,000,000 per occurrence. The City of Lovington, its elected and appointed officials, officers, agents and employees shall be named as additional insured by endorsement. Such policy or policies of insurance shall further provide that said policies of facility user shall be primary over any insurance held by the City of Lovington that may be applicable. The types and limits of insurance may be changed from time to time as determined by the City of Lovington.

The facility user agrees to hold the City of Lovington harmless and free from any liability of any nature arising out of the use of City Facilities, to include reimbursement of any legal costs and fees incurred in defense of such claims.

### Fee Payment

Payment in advance of use is required. Cash, check, or money order may be used for payment at least 2 weeks prior to the requested use. If payment is made less than 5 days prior to use, only cash or money order will be accepted.

### Deposit (\$10 per day)

A deposit of \$10 per each day of use for each facility is required. The deposit will be refunded if the group abides by all Athletic Field and Facility Use and Allocation Policy Rules and Regulations and pertinent City codes.

### Permit Cancellation

Permits may be canceled and/or rescheduled. Permits canceled by the City may be rescheduled as availability allows or may be refunded in full. Permits canceled by the user at least 5 days prior to the event will be refunded in full. No refunds will be issued if canceled with fewer than 5 days notice.

Refunds for inclement weather permit cancellations for days reserved for organized league play during a season will not be provided. Refunds for inclement weather permit cancellation will be provided for single or one time use's.

The City of Lovington may cancel use of City maintained facilities for any of the following:

- City begins work involving any of the facilities.
- When the health and safety of participants are threatened due to impending conditions, including but not limited to, heavy rains, high winds, smoke, blowing dust.
- Non-adherence to Athletic Field/Facility Use and Allocation Policy or City ordinance.

### Notice of Field Exchange

Organizations may give up or exchange their allocation, or any part of it, with an organization of equal or greater allocation priority only when all the parties agree in writing and the City reissues the permit. All requests for exchanges will be provided in writing.

### Notice of Non-Use of Field

Any organization that has been allocated space and does not intend to use it according to the permit, shall notify the City so that the fields/facilities may be reallocated or otherwise used at its maximum. Also, non-use of a field may result in revocation of the allocated field.

## **V. Facility Allocation Procedures, Rules & Regulations**

Facilities will be allocated by priority use.

Facilities will be allocated without regard to competitive level of skill.

Facilities will be allocated on a first come, first serve basis with respect to the historical time periods that organized league play has occurred (i.e. baseball league season, soccer league season).

League and organization presidents must provide schedules that indicate all allocated fields are being used. Fields not being utilized by the appropriate organization or team indicated on the use schedules three times during a season and/or the reserved period of use the field will be reassigned. Reassignment will be made based on the type of use requested while taking into consideration the safety of spectators and participants.

After all requirements for application of field use are met a formal permit will be issued authorizing use of City maintained fields. A copy of the permit must be available at each site approved for use for inspection by City staff and Police.

In addition to the Application and Agreement Request for Use of City of Lovington Facility form, a completed copy of the Athletic Field Use Rules and Regulations Form is required. Please see "Athletic Field Use Rules and Regulations" on page 6. Applicants are required to abide by the specific rules of the application as well as other City codes. Failure to comply may result in cancellation of any current or future permits. These rules include but are not limited to:

1. Groups consisting of ten or more individuals wishing to utilize a field must acquire a permit with the City of Lovington. Field use permit must be available during use and presented to any City representative upon request. It is the League/organizations president responsibility to make sure coaches receive and understand that permits must be on site during field use.
2. It is the responsibility of the organization president and the individual identified as the person in charge of the permit to enforce the rules and regulations regarding the conduct of the group while on permitted facilities.
3. Use begins and ends at the times stated on the permit including set-up and clean up. Groups are not allowed on fields prior to the start time on the permit and are required to have the fields clean, picked up and be off the fields at the ending time indicated on the permit. Check your permit for specific times you may access the fields.
4. Parking is allowed in designated areas only. No vehicles are allowed on City fields or property, other than parking lots, without written permission noted on the permit issued by the City of Lovington. User groups must inform their participants and spectators to park in facility parking lots and public parking areas.
5. No person shall consume or have in their possession any intoxicating beverage or other drug or narcotic prohibited by federal law.
6. Selling of food or other items is not allowed without City approval and must be noted on the permit.

- a. If approved, the organization must obtain all state permits as required.
  - b. Sales of food or other items are limited to organizations that qualify as a non-profit user.
  - c. Proceeds from sales of food or other items must be used for the benefit of the organization. Direct payment to an individual is prohibited. The City reserves the right to inspect financial records of the organization. Failure to provide the requested documents may result in cancellation of any current or future permits.
7. No person, organization, or league may charge for entry or admission to any City maintained field or facility.
  8. Balls and any other equipment thrown, batted, kicked, or otherwise land on private property must not be retrieved without the property owner's permission.
  9. Portable goals and/or markers are allowed but must be maintained in a safe and operable condition. This equipment must also be removed once the permit expires.
  10. At the conclusion of games or practice each user group is responsible for picking up trash and debris and depositing it into the proper trash bins. The field and any adjoining areas affected by a group's use must be picked up and cleared of all trash or full refund of deposit will be forfeited.
  11. Damage to facilities during use must be reported immediately to the City. Once reported, City staff will determine if the damage will result in a forfeit of the entire deposit. Groups may be subject paying the full cost of repair/replacement and may be charged an additional deposit as determined by the City.
  12. In the event of inclement weather, fields may be closed. It is the user groups responsibility to contact City Hall to verify field closures. Groups cannot play on fields that have been closed.
  13. All lining of City fields is prohibited unless otherwise authorized by the Recreation foreman.
  14. No permanent structures or equipment shall be erected on facilities unless approved by the City and is dedicated for public use.
  15. All organizations must have evidence that coaches and referee's and or umpires have taken Concussion Protocol Training.

## ATHLETIC FIELD/FACILITY USE RULES AND REGULATIONS

1. Groups consisting of ten or more individuals wishing to utilize a field must acquire a permit with the City of Lovington. Field use permit must be available during use and presented to any City representative upon request. It is the League/organizations president responsibility to make sure coaches receive and understand that permits must be on site during field use.
2. It is the responsibility of the organization president and the individual identified as the person in charge of the permit to enforce the rules and regulations regarding the conduct of the group while on permitted facilities.
3. Use begins and ends at the times stated on the permit including set-up and clean up. Groups are not allowed on fields prior to the start time on the permit and are required to have the fields clean, picked up and be off the fields at the ending time indicated on the permit. Check your permit for specific times you may access the fields.
4. Parking is allowed in designated areas only. No vehicles are allowed on City fields or property, other than parking lots, without written permission noted on the permit issued by the City of Lovington. User groups must inform their participants and spectators to park in facility parking lots and public parking areas.
5. No person shall consume or have in their possession any intoxicating beverage or other drug or narcotic prohibited by federal law.
6. Selling of food or other items is not allowed without City approval and must be noted on the permit.
  - a. If approved, the organization must obtain all state permits as required.
  - b. Sales of food or other items are limited to organizations that qualify as a non-profit user.
  - c. Proceeds from sales of food or other items must be used for the benefit of the organization. Direct payment to an individual is prohibited. The City reserves the right to inspect financial records of the organization. Failure to provide the requested documents may result in cancellation of any current or future permits.
7. No person, organization, or league may charge for entry or admission to any City maintained field or facility.
8. Balls and any other equipment thrown, batted, kicked, or otherwise land on private property must not be retrieved without the property owner's permission.
9. Portable goals and/or markers are allowed but must be maintained in a safe and operable condition. This equipment must also be removed once the permit expires.
10. At the conclusion of games or practice each user group is responsible for picking up trash and debris and depositing it into the proper trash bins. The field and any adjoining areas affected by a group's use must be picked up and cleared of all trash or full refund of deposit will be forfeited.
11. Damage to facilities during use must be reported immediately to the City. Once reported, City staff will determine if the damage will result in a forfeit of the entire deposit. Groups may be subject paying the full cost of repair/replacement and may be charged an additional deposit as determined by the City.
12. In the event of inclement weather, fields may be closed. It is the user groups responsibility to contact City Hall to verify field closures. Groups cannot play on fields that have been closed.
13. All lining of City fields is prohibited unless otherwise authorized by the Recreation foreman.
14. No permanent structures or equipment shall be erected on facilities unless approved by the City and is dedicated for public use.
15. All coaches and referee's and/or umpires must have current Concussion Protocol Training.
16. Non-adherence to any of these rules or City ordinance may result in the retention of a portion or all of the deposit and/or result in the cancellation of current and/or prohibition of future use.

Applicant Name:

\_\_\_\_\_

(Print)

\_\_\_\_\_

(Title)

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Date)

Approved by

City Representative

\_\_\_\_\_

(Print/Signature)

\_\_\_\_\_

(Date/Title)

## Application and Agreement Request for Use of City of Lovington Athletic Fields and Facilities

**Organization:** \_\_\_\_\_

**Name of Applicant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Home Phone:** ( ) \_\_\_\_\_ **Day Phone:** ( ) \_\_\_\_\_

**E-Mail Address:** \_\_\_\_\_

**Field/Facility Requested:** \_\_\_\_\_

**Description of Activity:** \_\_\_\_\_

**Estimated Attendance:** \_\_\_\_\_ **Open to Public** Yes \_\_\_\_\_ No \_\_\_\_\_

Day of Week	Date	Start Time Include Set-up	End Time
DRAFT			

I verify that the information on this Application and Agreement Request for Use of Athletic Fields / Facilities form is correct as defined in the Athletic Field Use & Allocation Policy and understand the possible consequences if the information is incorrect or misleading within the acceptable boundaries as described in the allocation policy. I have read the Application and Agreement and agree to all provisions listed on this Application, the Athletic Field Use & Allocation Policy, Rules and Regulations and disclaimers applied to issued permits and will communicate this information to our coaches and participants.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Organization President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Date Received			Organization Priority	1 2 3 4 5
Approval			Permit Number	

**SAVE HARMLESS AND INDEMNIFICATION AGREEMENT**

I, \_\_\_\_\_ (Applicant), hereby agree to protect, defend, indemnify and hold harmless the City of Lovington, its officers, employees and agents against any action, demand, claim, loss, injury or liability arising out of or resulting in any way from the use of the field(s) or facility(s) or from any actions taken, work performed or service provided by Applicant with respect to the use of City property for the purposes described in this permit application. Applicants obligations to indemnify and hold harmless are joint and several, and exclude only such action, demand, claim, loss or liability due to the sole negligence or willful misconduct of City and/or its employees. All of Applicants obligations under this agreement are intended to apply to the fullest extent permitted by law and shall survive the expiration, completion or sooner termination of the issued Permit. In any action or claim against the City in which Applicant is defending City, City shall have the right to approve legal counsel providing City's defense.

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Signature of Organization President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**DRAFT**

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Resolution 2016-70: Weed Ordinance Amendments  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** August 16, 2016

**STAFF SUMMARY:**

Resolution 2016-70 will authorize the advertisement of an Ordinance that will amend the weed and grass control section of the LMC. This ordinance will:

- Require that sidewalks, curbs, and gutters be kept clear of all grass, weeds, dirt, or debris.
- Allow for citations to be immediately issued for weeds or grass that exceed 15 inches in height, without requiring a ten day written warning.
- All for repeat offenses to be issued an immediate citation, without requiring a ten day written warning.

After being presented on June 13, 2016, no further comment or suggested changes have been received.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Resolution 2016-70  
Legal Notice  
Ordinance Draft

**RECOMMENDATION:**

Motion to approve Resolution 2016-70

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-70**

**APPROVAL TO PUBLISH AND ADVERTISE AN ORDINANCE TO CAUSE AN AMENDMENT  
TO CHAPTER 8.16 OF THE LOVINGTON MUNICIPAL CODE**

**WHEREAS**, the City has made efforts to reduce the nuisance of weeds, grass, litter, and refuse in the City; and

**WHEREAS**, changes to the municipal code will reduce the amount of time required to achieve compliance; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission directs the City Clerk to publish and advertise the Ordinance No. 48 – An Ordinance of the City of Lovington, New Mexico, amending Title 8 Health and Safety, Chapter 8.16 Garbage, Refuse, Weeds and Litter, Article III Weeds and Grass of the Lovington Municipal Code.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

## LEGAL NOTICE

Notice is hereby given of the title and general subject matter contained in an ordinance which the Board of City of Lovington Commissioners of City of Lovington, New Mexico, the governing body of the City of Lovington, intends to adopt at a regular meeting on September 26<sup>th</sup>, 2016 at the hour of 5:30 p.m. at the Commission Chambers, 214 S. Love, Lovington, NM 88260, relating to the amendment of Chapter 8.16

The title of the Ordinance is:

**CITY OF LOVINGTON, NEW MEXICO**  
**ORDINANCE NO. 548**

An Ordinance of the City of Lovington, New Mexico, amending Title 8 Health and Safety, Chapter 8.16 Garbage, Refuse, Weeds and Litter, Article III Weeds and Grass of the Lovington Municipal Code.

Complete copies of the proposed ordinance will be on file and available for inspection at the offices of the City of Lovington Clerk during regular business hours.

Dated this 23<sup>rd</sup> day of August, 2016.

**CITY OF LOVINGTON, NEW MEXICO**  
By: /s/ Carol Ann Hogue  
City of Lovington Clerk

Publish in the Lovington Leader – 8/25/2016 and 9/13/2016

## ORDINANCE NO. 548

### AN ORDINANCE OF THE CITY OF LOVINGTON, NEW MEXICO, AMENDING TITLE 8 HEALTH AND SAFETY, CHAPTER 8.16 GARBAGE, REFUSE, WEEDS AND LITTER, ARTICLE III WEEDS AND GRASS OF THE LOVINGTON MUNICIPAL CODE

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON, NEW MEXICO  
THAT TITLE 8, CHAPTER 8.16, ARTICLE III BE AND HEREBY IS AMENDED AS FOLLOWS:

#### **8.16.130 Property owner responsible for weed and grass control.**

Any owner, lessee or occupant or agent, servant, representative or employee of an owner, lessee or occupant having control of any lot within the city who shall allow or maintain on any such lot any growth of weeds or grass to a height of over ten inches shall be deemed maintaining a nuisance. This includes the area located between the property line and the middle of the alley adjacent to the property, and the area located between the property line and the curb, the area of any curbs or sidewalks located on the property, and the area located ten feet outside the property line where there is no curb. **Sidewalks, curbs, and gutters shall be kept clear of any grass or weeds regardless of height, dirt, or debris.**

#### **8.16.130 Notice to owner, lessee or occupant**

If the provisions of Section [8.16.130](#) are not complied with, the City Manager or his or her authorized representative, shall notify the owner, lessee or occupant, or person having charge or control of any occupied or unoccupied lot or tract of land, of the non-compliance with the provisions of this chapter by the issuance of a ten-day written warning. In the event such owner, lessee or occupant, or any person having charge or control of such lot or tract of land, cannot be determined or the owner shall be a nonresident of the city, such notice may be served by posting a copy of the written notice upon the premises, with a copy mailed by certified letter to the last known address of the owner. A citation ~~of~~ citations may be issued for violations remaining after the expiration of the warning of the period. **In the event that weeds or grass exceed fifteen (15) inches in height, a citation of the violation may be immediately issued. The same owner, lessee or occupant, or any person having charge or control of a lot or tract of land that repeats the same violation may be immediately issued a citation for the non-compliance with the provisions of this chapter.**

**PASSED, ADOPTED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016**

CITY OF LOVINGTON

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-71  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 16, 2016

**STAFF SUMMARY:**

Each year, the City is required to appoint a voting delegate and one alternate to attend the annual business meeting of the New Mexico Municipal League.

The annual meeting this year will occur on September 1, 2016 at the annual conference to be held in Hobbs, New Mexico.

**FISCAL IMPACT:**

REVIEWED BY: \_\_\_\_\_  
*Finance Director*

**ATTACHMENTS:**

Resolution 2016-71

**RECOMMENDATION:**

Motion to approve Resolution 2016-71

\_\_\_\_\_  
Department Head

*James R. Williams*  
\_\_\_\_\_  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-71**

**A RESOLUTION APPOINTING A VOTING DELEGATE AND ALTERNATE FOR THE 2016  
ANNUAL NEW MEXICO MUNICIPAL LEAGUE CONFERENCE**

**WHEREAS**, the City is a member of the New Mexico Municipal League; and

**WHEREAS**, at the annual conference a business meeting is held and the City is afforded one vote; and

**WHEREAS**, it is necessary to appoint a voting delegate and alternate prior to this meeting that will be held September 1, 2016 at the annual conference in Hobbs, New Mexico.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission appoints the following individuals as voting delegate and alternate:

VOTING DELGATE: \_\_\_\_\_

ALTERNATE: \_\_\_\_\_

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-72: MAP Participation  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 16, 2016

**STAFF SUMMARY:**

Resolution 2016-72 will authorize participation in the NMDOT MAP Agreement for the 17th Street Phase II project. This project will involve north 17th Street beginning at Jefferson and terminating north of Polk Avenue.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

\$146,642 in grant funding for this project.

**ATTACHMENTS:**

Resolution 2016-72

**RECOMMENDATION:**

Motion to approve Resolution 2016-72

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-72**

**PARTICIPATION IN LOCAL GOVERNMENT ROAD FUND PROGRAM ADMINISTERED  
BY NEW MEXICO DEPARTMENT OF TRANSPORTATION**

**WHEREAS**, the City of Lovington and the New Mexico Department of Transportation enter into a Cooperative MAP Agreement; and

**WHEREAS**, the total cost of the project will be **\$195,523.00** to be funded in proportional share by the parties hereto as follows:

a. New Mexico Department of Transportation's share shall be 75% or **\$146,642.00**

and

b. City of Lovington's proportional matching share shall be 25% or **\$48,881.00**

TOTAL PROJECT COST IS **\$195,523.00**

City of Lovington shall pay all costs, which exceed the total amount of **195,523.00**.

**NOW, THEREFORE BE IT RESOLVED** in official session that City of Lovington determines, resolves, and orders as follows:

That the project for this Cooperative agreement is adopted and has a priority standing.

The agreement terminates on **June 30, 2018** and the City of Lovington incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into the written agreement.

NOW therefore, be it resolved by the City of Lovington to enter into Cooperative MAP Agreement Project Number **MAP-7625(914)**, Control Number **L200360** with the New Mexico Department of Transportation for LGRF Project for year **2016 – 2017** to plan, design, construct, reconstruct, rehabilitate pavement, and make drainage and miscellaneous improvement to North 17ths Street from Jefferson to Dogwood within the control of the City of Lovington in Lovington, Lea County, New Mexico.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at City of Lovington, New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST: \_\_\_\_\_  
Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-73: Fair Housing Resolution  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 17, 2016

**STAFF SUMMARY:**

Resolution 2016-73 will adopt a compliant Fair Housing Resolution and is required by CDBG. This resolution will ensure that the City will implement programs, within resource constraints that assures equal opportunity in housing.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Resolution 2016-73

**RECOMMENDATION:**

Motion to approve Resolution 2016-73

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-73**

**FAIR HOUSING RESOLUTION WITH REQUIRED ELEMENTS**

A resolution of the City Commission of the City of Lovington adopting a fair housing policy, making known its commitment to the principle of fair housing, and describing actions it shall undertake to affirmatively further fair housing.

**WHEREAS**, the Housing and Community Development act of 1974 as amended requires that all applicant for Community Development Block Grants funds certify that they shall affirmatively further fair housing; and

**WHEREAS**, the Civil Rights Act of 1968 (commonly known as the Federal Fair Housing Act) and the Fair Housing Amendments Act of 1988 declare a national policy to prohibit discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing or in the provision of brokerage services, on the basis of race, color, religion, sex, disability, familial status or national origin; and

**WHEREAS**, fairness is the foundation of the American system and reflects traditional American values; and

**WHEREAS**, discriminatory housing practices undermine the strength and vitality of America and its people;

**NOW, THEREFORE, BE RESOLVED THAT** the City Commission of the City of Lovington hereby wish all persons living, working, doing business in or travelling through this City to know that: discrimination in the sale, rental, leasing, and financing of housing or land to be used for construction of housing, or in the provision of brokerage services on the basis of race, color, religion, sex, handicap, familial status or national origin is prohibited by Title VIII of the Fair Housing Act Amendments of 1988; and that it is the policy of the City of Lovington to implement programs, within the constraints of its resources, to ensure equal opportunity in housing for all person regardless of race, color, religion, sex, handicap, familial status or national origin; and within available resources the City of Lovington will assist all persons who feel they have been discriminated against in housing issues on the basis of race, color, religion, sex, handicap, familial status or national origin to seek equality under existing federal and state laws to file a complaint with the New Mexico Attorney General's Office or the U.S. Department of Housing and Urban Development; and that the City of Lovington shall publicize this Resolution and thereby encouraging owners of rental properties, developers, builders and others involved with housing to become aware of their respective responsibilities and rights under the Fair Housing Amendments Act of 1988 and any applicable state or local laws or

ordinances; and that the City of Lovington shall undertake the following actions to affirmatively further fair housing:

1. Provide copies of this resolution to the real estate community, banks, developers, community organizations and local media.
2. Post a copy on the City website
3. Provide a copy of this resolution in each utility bill on an annual basis.

PASSES AND ADOPTED BY THE City Commission of the City of Lovington on this 22<sup>ND</sup> day of August, 2016.

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Paul Campos, Mayor

ATTEST:

APPROVED AS TO FORM:

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Carol Ann Hogue, City Clerk

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City Attorney

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Resolution 2016-74: Citizen Participation Plan  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** August 17, 2016

**STAFF SUMMARY:**

Resolution 2016-74 will adopt a Citizen Participation Plan that is compliant with the 1987 revisions to the Housing and Community Development Act. This plan is a requirement for CDBG Funding. The plan summary is as follows:

- Objective A: Communication with persons of low and moderate income
- Objective B: Ensure reasonable and timely access to local meetings, information, and records relating to CDBG funds
- Objective C: Provide technical assistance to groups and representatives of low and moderate income that request assistance in developing proposals.
- Objective D: Provide at least 2 public hearings to obtain citizen participation during the CDBG Program
- Objective E: Provide timely written answers to written complaints and grievances within 15 days
- Objective F: Identify the needs of non-English speaking residents in the care of public hearings where a significant number of residents can be reasonably expected to participate

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Resolution 2016-74  
Citizen Participation Plan

**RECOMMENDATION:**

Motion to approve Resolution 2016-74

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-74**

**A RESOLUTION ADOPTING A HOUSING AND COMMUNITY DEVELOPMENT ACT CITIZEN  
PARTICIPATION PLAN**

**WHEREAS**, the City desires to comply with the 1987 revisions to the Housing and Community Development Act; and

**WHEREAS**, a Citizen Participation Plan is designed to encourage citizen participation

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission adopts the Citizen Participation Plan, attached hereto for reference.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

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Paul Campos, Mayor

ATTEST:

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Carol Ann Hogue, City Clerk

# EXHIBIT 1-P

## CITIZEN PARTICIPATION PLAN WITH REQUIRED ELEMENTS

### Introduction

In accordance with the 1987 revisions to the Housing and Community Development Act and in an effort to further encourage citizen participation, \_\_\_\_\_ City of Lovington \_\_\_\_\_ has prepared and adopted this Citizen Participation Plan.

### Objective A

\_\_\_\_\_ City of Lovington \_\_\_\_\_ will provide for and encourage citizen participation within its area of jurisdiction, with particular emphasis on participation by persons of low and moderate income. *Action items:*

1. *Adopt and circulate an Open Meetings Resolution which provides citizens with reasonable notice of county/municipality upcoming meetings, actions and functions.*
2. *Develop press releases on county/municipality meetings, actions and hearings, and circulate to newspapers, radio and television media.*
3. *Develop and maintain listing of groups and representative of low and moderate income persons, and include on mailing lists of announcements, notices, press releases, etc.*

### Objective B

\_\_\_\_\_ City of Lovington \_\_\_\_\_ will provide citizens with reasonable and timely access to local meetings, information and records relating to the proposed and actual use of CDBG funds. *Action items:*

1. *Public notices, press releases, etc., should allow for a maximum length of notice to citizens.*
2. *Appropriate information and records relating to the proposed and actual use of CDBG funds must be available upon request to all citizens. Personnel and income records may be exempted from these requirements.*
3. *Meetings, hearing, etc., should be conducted at times and locations conducive to public attendance, e.g., evenings, Saturdays.*

### Objective C

\_\_\_\_\_ City of Lovington \_\_\_\_\_ will provide technical assistance to groups and representatives of low and moderate income persons that request assistance in developing proposals. *Note: the level and type of assistance is to be determined by the county/municipality. Action items:*

1. *Low and moderate income groups should be advised that technical assistance, particularly in the area of community development, is available from the county/municipality upon request.*
2. *Document technical assistance provided to such groups and has documentation available for review.*

#### Objective D

City of Lovington will provide a minimum of two public hearings to obtain citizen participation and respond to proposals and questions at all stages of the Community Development Block Grant Program. *Action items:*

1. *Advise citizens of the CDBG program objectives, range of activities that can be applied for and other pertinent information.*
2. *Conduct a minimum of two public hearings:*
  - a. *One public hearing will be held to advise citizens of the program objectives and range of activities that can be applied for, and to obtain the citizen's views on community development and housing needs, to include the needs of low and moderate income people. This hearing will take place prior to the selection of the project to be submitted to the state for CDBG funding assistance.*
  - b. *A second public hearing will be held to review program performances, past use of funds and make available to the public its community development and housing needs, including the needs of low and moderate income families, and the activities to be undertaken to meet such needs.*
3. *Publish public hearing notices in the non-legal section of newspapers or in other local media. Evidence of compliance with these regulations will be provided with each CDBG application, i.e., hearing notice minutes of public meetings, list of needs and activities to be undertaken, etc. Amendments to goals, objectives and applications are also subject to public participation.*

#### Objective E

City of Lovington will provide timely written answers to written complaints and grievances within 15 working days where practical. *Action items:*

1. *Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.*
2. *Allow for appeal of a decision to a neutral authority.*
3. *File a detailed record of all complaints or grievances and responses in one central location with easy public access.*

#### Objective F

City of Lovington will identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of residents can be reasonably expected to participate. *Action items:*

1. *Identify areas where large majorities of non-English speaking persons reside and make appropriate provisions when issues affecting these areas are to be discussed at public meetings, hearings, etc. Appropriate provisions will include having interpreters available at the meeting and having briefing material available in the appropriate language.*
2. *Maintain records/rosters of public hearing attendees and proceedings to verify compliance with this objective.*

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-75: Residential Anti-Displacement and Relocation Assistance Plan

DEPARTMENT: Executive

SUBMITTED BY: James R. Williams, City Manager

DATE SUBMITTED: August 17, 2016

**STAFF SUMMARY:**

Resolution 2016-75 will adopt a Residential Anti-Displacement and Relocation Assistance Plan that is required by CDBG Programs. This plan will require the City to provide one-for-one replacement of lower income dwelling units that are demolished or converted to a use other than lower-income dwelling units in connection with CDBG activities. In addition, it requires relocation assistance to be provided for in relation to those activities and provides for definitions of qualifying individuals.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Resolution 2016-75  
Anti-displacement and Relocation Assistance Plan

**RECOMMENDATION:**

Motion to approve Resolution 2016-75

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-75**

**A RESOLUTION ADOPTING A RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION  
ASSISTANCE PLAN**

**WHEREAS**, the City desires to comply with Section 104(d) of the Housing and Community Development Act of 1974, as amended, Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act, and the implementing regulations at 24 CFR Part 42; and

**WHEREAS**, grantees under the CDBG program must certify that it has in effect and is following a residential anti-displacement and relocation assistance program.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission adopts the Residential Anti-displacement and Relocation Assistance Plan, attached hereto for reference.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

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Paul Campos, Mayor

ATTEST:

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Carol Ann Hogue, City Clerk

**Exhibit 1-R**  
**RESIDENTIAL ANTI-DISPLACEMENT AND RELOCATION ASSISTANCE**  
**PLAN WITH REQUIRED ELEMENTS**

**Residential Anti-Displacement and Relocation Assistance Plan**

I. Background/Introduction

Section 104(d) of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5304(d)(4)), Section 105(b)(16) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12705(b)(16)), and implementing regulations at 24 CFR Part 42, specify that a grantee under the Community Development Block Grant (CDBG) must certify that it has in effect and is following a “residential Anti-displacement and relocation assistance plan” (Plan). As a CDBG grantee, City of Lovington must certify to State of New Mexico Department of Finance and Administration Local Government Division that it has and is following such a Plan.

The Plan must include three components: 1) one-for-one replacement requirements for lower-income housing units, 2) relocation assistance, and 3) a description of the steps City of Lovington will take to minimize displacement.

II. Activities Covered by the Plan

All activities involving the use of CDBG funds that cause displacement as a direct result of demolition or conversion of a lower-income dwelling are subject to the requirements specified in the Plan. Activities for which funds are first obligated on or after September 30, 1988 are subject to the requirements specified in the Plan, without regard to the source year of the funds.

III. Uniform Relocation Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) govern displacement that directly results from acquisition, rehabilitation, or demolition of real property when federal funds are used. City of Lovington’s Residential Anti-displacement and Relocation Assistance Plan is in no way intended to supersede the URA. CDBG assisted activities may still be subject to the requirements of the URA.

IV. One-for-One Replacement Units

All occupied and vacant occupiable lower-income dwelling units that are demolished or converted to a use other than as lower-income dwelling units in connection with an assisted activity must be replaced with comparable lower-income units. Replacement lower-income dwelling units may be provided by any governmental agency or private developer and must meet the following requirements:

- A. The units must be located within City of Lovington to the extent feasible, the units shall be located within the same neighborhood as the units replaced

- B. The units must be sufficient in number and size to house no fewer than the number of occupants who could have been housed in the units that are demolished or converted. The number of occupants who could have been housed in the units shall be in accordance with applicable local housing occupancy codes. The units may not be replaced with smaller units (e.g., a 2-bedroom unit with two 1-bedroom units), unless City of Lovington has provided information demonstrating that such a proposed replacement is consistent with the needs assessment contained State of New Mexico Department of Finance and Administration Local Government Division HUD-approved Consolidated Plan.
- C. The units must be in standard condition and must at a minimum meet Section 8 Program Housing Quality Standards. Replacement lower-income units may include units brought from a substandard condition to standard condition if: 1) no person was displaced from the unit; and 2) the unit was vacant for at least 3 months before execution of the agreement between City of Lovington and the property owner.
- D. The units must initially be made available for occupancy at any time during the period beginning 1 year before the recipient makes public the information required under Section F below and ending 3 years after the commencement of the demolition or rehabilitation related to the conversion.
- E. The units must be designed to remain lower-income dwelling units for at least 10 years from the date of initial occupancy. Replacement lower-income dwelling units may include, but are not limited to, public housing or existing housing receiving Section 8 project-based assistance
- F. Before City of Lovington enters into a contract committing it to provide CDBG funds for any activity that will directly result in the demolition of lower-income dwelling units or the conversion of lower-income dwelling units to another use, City of Lovington must make public and submit in writing to State of New Mexico Department of Finance and Administration Local Government Division the following information:
- 1 A description of the proposed assisted activity;
  - 2 The location on a map and number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than for lower-income dwelling units as a direct result of the assisted activity;
  - 3 A time schedule for the commencement and completion of the demolition or conversion;
  - 4 The location on a map and the number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units. If such data is not available at the time of the submission to State of New Mexico Department of Finance and Administration Local Government Division, the submission shall identify the general location on an area map and the approximate number of dwelling units by size, and information identifying the specific location and number of dwellings units by size shall be submitted and disclosed to the public as soon as it is available;
  - 5 The source of funding and time schedule for the provision of replacement dwelling units;
  - 6 The basis for concluding that each replacement unit will remain a lower-income dwelling unit for at least 10 years from the date of initial occupancy; and
  - 7 Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units is consistent with the needs assessment contained in

the State of New Mexico Department of Finance and Administration Local Government Division Consolidated Plan.

- G. The one-for-one replacement requirements may not apply if HUD determines, based on objective data, that there is an adequate supply of vacant lower-income dwelling units in standard condition available on a non-discriminatory basis within City of Lovington. In making such a determination, State of New Mexico Department of Finance and Administration Local Government Division will consider such factors as vacancy rates, numbers of lower-income units in City of Lovington and the number of eligible families on the Section 8 waiting list.

V. Relocation Assistance

Each lower-income person who is displaced as a direct result of CDBG assisted demolition or conversion of a lower-income dwelling shall be provided with relocation assistance.

Relocation assistance includes advisory services and reimbursement for moving expenses, security deposits, credit checks, other moving expenses, including certain interim living costs, and certain replacement housing assistance.

Displaced persons have the right to elect, as an alternative to the benefits described in this Plan, to receive benefits under the URA, if they determine that it is in their best interest to do so. The following relocation assistance shall be available to lower-income displacement persons:

- A. Displaced lower-income persons will receive the relocation assistance required under 49 CFR 24, Subpart C (General Relocation Requirements) and Subpart D (Payment for Moving and Related Expenses) whether the person elects to receive assistance under the URA or the assistance required by CDBG regulations. Relocation notices must be distributed to the affected persons in accordance with 49 CFR 24.203 of the URA;
- B. The reasonable and necessary cost of any security deposit required to rent the replacement dwelling unit and for credit checks required to rent or purchase the replacement dwelling unit;
- C. Actual reasonable out-of-pocket costs incurred in connection with temporary relocation, including moving expenses and increased housing costs, if:
  - 1. The person must relocate temporarily because continued occupancy of the dwelling unit constitutes a substantial danger to the health or safety of the person or the public; or
  - 2. The person is displaced from a lower-income dwelling unit, none of the comparable replacement units to which the person has been referred qualifies as a lower-income dwelling unit, and a suitable lower-income dwelling unit is scheduled to become available through one-for-one replacement requirements
- D. Replacement Housing Assistance. Displaced persons are eligible to receive one of the following two forms of replacement housing assistance:
  - 1. Each person shall be offered rental assistance equal to 60 times the amount necessary to reduce the monthly rent and estimated average monthly cost of

utilities for a replacement dwelling to the "Total Tenant Payment", as determined under 24 CFR 813.107. All or a portion of this assistance may be offered through a certificate or housing voucher for rental assistance under the Section 8 program. Where Section 8 assistance is provided to the displaced person,

City of Lovington must provide the person with referrals to comparable units whose owners are willing to participate in Section 8 program to the extent that cash assistance is provided, it will be provided in installments.

2. In lieu of the housing voucher, certificate or cash assistance described above, the person may elect to receive a lump sum payment allowing them to secure participation in a housing cooperative or mutual housing association. This lump sum payment shall be equal to the capitalized value of 60 monthly installments of the amount that is obtained by subtracting the

"Total Tenant Payment", as determined under 24 CFR 813.107, from the monthly cost of rent and average monthly cost of utilities at a comparable replacement dwelling unit. To compute the capitalized value, the installments shall be discounted at the rate of interest paid on passbook savings in a federally insured financial institution conducting business within City of Lovington.

Displaced lower-income tenants shall be advised of their right to elect relocation assistance pursuant to the URA and the regulations at 49 CFR 24 as an alternative to the relocation assistance available under CDBG regulations.

## VI. Eligibility for Relocation Assistance

A lower-income person is eligible for relocation assistance if they are considered to be a "displaced person" as defined in 24 CFR 42.305. A displaced person means a lower-income person who, in connection with an activity assisted under the CDBG program, permanently moves from real property or permanently moves personal property from real property as a direct result of demolition or conversion of a lower-income dwelling.

For purposes of this definition, a permanent move includes a move made permanently and:

- A. After notice by the owner to move from the property, if the move occurs on or after the date of the submission of a request to City of Lovington for CDBG assistance that is later approved for the requested activity; or
- B. After notice by the owner to move from the property, if the move occurs on or after the date of the initial official submission to HUD of the consolidated plan under 24 CFR Part 91 describing the assisted activity; or
- C. Before the dates described in A & B above, if City of Lovington or State of New Mexico Department of Finance and Administration Local Government Division determines that the displacement was a direct result of conversion or demolition in connection with a CDBG assisted activity; or
- D. By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
  1. The tenant moves after execution of the CDBG agreement covering the acquisition, rehabilitation or demolition and the move occurs before the tenant is

provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions, including a monthly rent and estimated average monthly utility costs that do not exceed the greater of the tenant's monthly rent before such agreement, or the total tenant payment as determined under 24 CFR 813.107 if the tenant is lower-income, or 30 percent of gross household income if the tenant is not lower-income.

2. The tenant is required to relocate temporarily, does not return to the building/complex, and either is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or other conditions of the temporary relocation are not reasonable.
3. The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

If the displacement occurs on or after the appropriate date described in A & B above, the lower-income person is not eligible for relocation assistance if:

- A. The person is evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the City of Lovington determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;
- B. The person moved into the property on or after the date described in A & B above after receiving written notice of the expected displacement; or
- C. City of Lovington determines that the displacement was not a direct result of the CDBG assisted activity and the State of New Mexico Department of Finance and Administration Local Government Division concurs with this determination.

## VII. Minimizing Displacement

The CDBG regulations regarding the demolition or conversion of lower-income dwelling units are designed to ensure that lower-income persons are provided with adequate, affordable replacement housing. Naturally, involuntary displacement should be discouraged whenever a reasonable alternative exists. Involuntary displacement is extremely disruptive and disturbing, especially to lower-income persons who do not have the means to locate alternative housing.

There are various ways that displacement can be minimized. The following are steps that will be taken to minimize the involuntary displacement of lower-income persons when CDBG funds are involved:

- A. Screening of Applications All CDBG applications will be reviewed to determine whether involuntary displacement is likely to occur. Those applications involving displacement will receive a lower priority recommendation for funding unless it can be shown that alternatives are not available.
- B. Acquisition of Property Applicants who apply for CDBG funds to acquire property for the

development of lower-income housing will be encouraged to purchase vacant land. In the case of in-fill and other projects where this is not feasible and the project involves potential displacement, the applicant shall agree to allow the displaced lower-income person(s) to occupy the new housing at an affordable rent.

Applicants who utilize CDBG funds to rehabilitate or convert a lower-income unit to a non-residential use will be required to supply replacement housing consistent with paragraph IV, as well as relocation assistance.

- C. Cost of Relocation Assistance The cost of any required relocation assistance and the provision of replacement housing will be borne by the applicant and may be paid for out of CDBG funds awarded to the project.

### VIII. Definitions

- A. "Comparable replacement dwelling unit" means a dwelling unit that:
  - 1 Meets the criteria of 49 CFR 24.2(d)(1) through (6); and
  - 2 Is available at a monthly cost for rent plus estimated average monthly utility costs that does not exceed the "Total Tenant Payment" determined under 24 CFR 813.107 after taking into account any rental assistance the household would receive.
- B. "Lower-income dwelling unit" means a dwelling unit with a market rental (including utility costs) that does not exceed the applicable Fair Market Rent (FMR) for existing housing and moderate rehabilitation established under 24 CFR Part 888.
- C. "Standard condition" means units that at a minimum meet the Existing Housing Quality Standards of the Section 8 rental subsidy program.
- D. "Substandard condition suitable for rehabilitation" means units with code violations that can be brought to Section 8 Housing Quality Standards within reasonable monetary amounts.
- E. "Vacant occupiable dwelling unit" means a dwelling unit that is in a standard condition; a vacant dwelling unit that is in substandard condition, but is suitable for rehabilitation; or a dwelling unit in any condition that has been occupied (except by a squatter) at any time within the period beginning 3 months before the date of execution of the agreement by City of Lovington covering the rehabilitation or demolition.

### IX. Grievances

The City of Lovington will provide timely written answers to written complaints and grievances within 15 working days where practical. Action items:

- A. Adopt complaint handling procedures or policies to insure that complaints or grievances are responded to within 15 days, if possible.
- B. Allow for appeal of a decision to a neutral authority.

- C. File a detailed record of all complaints or grievances and responses in one central location with easy public access.

IX. Certification

The City of Lovington herewith certifies to follow the Anti-displacement relocation plan described above and adopt the plan by resolution annually.

Plan Adoption Date: \_\_\_\_\_

Adoption Instrument: \_\_\_\_\_

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

\_\_\_\_\_ Date

James Williams

\_\_\_\_\_  
City Manager

Copy to Local Government Division with attachments

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-76: Section 3 Plan  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 17, 2016

**STAFF SUMMARY:**

Resolution 2016-76 will adopt the HUD Section 3 Plan that is required for CDBG eligibility. The components of this plan will identify the City Manager as the Section 3 Coordinator, specifies certain hiring processes (advertisement, listing of jobs, records, and iring preferences, small business preference, training preferences, and CDBG contract language.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Resolution 2016-76  
Section 3 Plan

**RECOMMENDATION:**

Motion to approve Resolution 2016-76

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-76**

**A RESOLUTION ADOPTING A SECTION 3 PLAN WITH REQUIRED ELEMENTS**

**WHEREAS**, the City is committed to comply with Section 3 of the Housing and Urban Development Act of 1968; and

**WHEREAS**, the Act encourages the use of small local businesses and the hiring of low income residents of the community.

**NOW, THEREFORE, BE IT RESOLVED**, that the Lovington City Commission adopts the Section 3 Plan, attached hereto for reference and appoints the City Manager as the Section 3 Coordinator.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

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Paul Campos, Mayor

ATTEST:

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Carol Ann Hogue, City Clerk

## EXHIBIT 1-T

### SECTION 3 PLAN WITH REQUIRED ELEMENTS

The City of Lovington is committed to comply with Section 3 of the Housing and Urban Development Act of 1968. This Act encourages the use of small local businesses and the hiring of low income residents of the community.

The City of Lovington has appointed James R. Williams, City Manager as the Section 3 Coordinator, to advise and assist key personnel and staff on Section 3, to officially serve as focal point for Section 3 complaints, and as the on-site monitor of prime contractors and sub-contractors to insure the implementation and enforcement of their Section 3 plans. The approval or disapproval of the Section 3 plan is the ultimate responsibility of the City of Lovington. Documentation of efforts will be retained on file for monitoring by the state.

Therefore, the City of Lovington shall:

1. Hiring
  - a. Advertise for all City of Lovington positions in local newspapers
  - b. List all City of Lovington job opportunities with the State Employment Service
  - c. Give preference in hiring to lower income persons residing in the City of Lovington. This means that if two equally qualified persons apply and one is a resident of the City of Lovington and one is not, the resident will be hired
  - d. Maintain records of City of Lovington hiring as specified on this form

<u>City of Lovington</u> ANTICIPATED/ACTUAL HIRES			<u>2016</u> HIRING YEAR	
PLANNED			ACTUAL	
Job Classification	# of Positions to be Filled	# of Positions to be Filled by Lower Income <u>City of Lovington</u> Residents	# of Positions Filled	Positions Filled by Lower Income <u>City of Lovington</u> Residents
General Maintenance	4	4		

- Chart for Section 3 Plan **MUST** be filled out in its entirety.

## 2. Contracting

- a. The City of Lovington will compile a list of businesses, suppliers and contractors located in the City of Lovington.
- b. These vendors will be contacted for bid or quotes whenever the City of Lovington requires supplies, services or construction.
- c. Preference will be given to small local businesses. This means if identical bids/quotes are received from a small business located within the City of Lovington and one from outside the City of Lovington, the contract will be awarded to the business located within the community.

## 3. Training

The City of Lovington shall maintain a list of all training programs operated by the City of Lovington and its agencies and will direct them to give preference to City of Lovington residents. The City of Lovington will also direct all CDBG sponsored training to provide preference to City of Lovington residents.

## 4. CDBG Contracts

All CDBG bid proposals and contracts shall include the following Section 3 language.

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that the greatest extent feasible, opportunities for training and employment be given lower income residents of the project areas, and contracts for work in connection with the project be awarded to business concerns residing in the project area.
- b. The parties to this contract will comply with the provision of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR and all applicable rules and orders of the Department issued there-under prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The contractor will send to each labor organization or representative of workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under the Section 3 clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The contractor will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the

subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR 135. The contractor will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135, and will not let any subcontract unless the subcontractor has first provided it with the requirements of these regulations.

- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders of the Department, issued thereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR 135.

The City of Lovington shall require each contractor to prepare a written Section 3 plan as a part of their bids on all jobs exceeding \$100,000. All Section 3 plans shall be reviewed and approved by the City's Equal Opportunity Section 3 Compliance Officer and retained for monitoring by the state.

The City of Lovington will maintain all necessary reports and will insure that all contractors and subcontractors submit required reports.

LOWER INCOME CLARIFICATION

A family who resides in City of Lovington and whose income does not exceed the income limit for the size of family as per the attached Section 8 Income Limit for City of Lovington. Information contained in our Section 3 Plan reflects the status of the City of Lovington employees regarding lower income considerations based on their salary paid by the City of Lovington.

\_\_\_\_\_  
Paul Campos  
\_\_\_\_\_  
Mayor  
\_\_\_\_\_

\_\_\_\_\_  
Date

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-77: Annual Certifications and Commitments  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 17, 2016

**STAFF SUMMARY:**

Resolution 2016-77 will adopt CDBG Annual Certifications and Statements. This resolution provides that we have adopted a Citizen Participation Plan, Fair Housing Plan, Residential Anti-Displacement and Relocation Assistance Plan, a Section 3 Plan, and we have adopted a procurement policy that is in compliance with federal and New Mexico procurement code.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Resolution 2016-77

**RECOMMENDATION:**

Motion to approve Resolution 2016-77

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

Grantee Name: City of Lovington

CDBG Project Number: \_\_\_\_\_

RESOLUTION # 2016-77

**ADOPTION OF REQUIRED  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)  
ANNUAL CERTIFICATIONS AND COMMITMENTS**

**WHEREAS**, municipalities, counties or other entities that accept Community Development Block Grant (CDBG) funds must adopt certain required federal regulations; and

**WHEREAS**, the City of Lovington (hereinafter referred to as the Grantee) wishes to ensure compliance with federal regulations by adopting the following required certifications and commitments:

- |  |  |
|--|--|
| <b>Citizen Participation</b>                                     | certifies its commitment to citizen participation by preparing and adopting a Citizen Participation Plan that includes ways to encourage public input using various methods to reach the public and assures that citizens are provided reasonable notice and timely access to local meetings, per the Open Meetings Act (NMSA 1978, Chapter 10, Article 15)                    |
| <b>Fair Housing</b>  | certifies its commitment to the Fair Housing Act of 1968 to affirmatively further fair housing, which prohibits discrimination in the sale, rental, leasing and financing of housing or land to be used for the construction of housing on the basis of race, color, religion, sex, disability, familial status, or national origin  |
| <b>Residential Anti-Displacement &amp; Relocation Assistance</b> | certifies its compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, whose purpose is to provide uniform, fair, and equitable treatment for persons whose real property is acquired or for persons displaced as a result of a CDBG-funded project or activity   |
| <b>Section 3</b>   | certifies its commitment to Section 3, a provision of the Housing and Urban Development (HUD) Act of 1968, which requires recipients of certain HUD financial assistance, to the greatest extent feasible, provide job training, employment, and contracting opportunities for low and very low income residents in connection with projects and activities in their community |
| <b>Procurement</b>   | certifies its compliance with federal procurement code (24 CFR Part 85.36) and New Mexico Procurement Code (§13-1-120 NMSA 1978) by adopting a procurement policy annually for CDBG projects   |

**NOW, THEREFORE, BE IT RESOLVED**, that the Grantee adopts the above CDBG certifications and commitments that must be adopted annually.

**PASSED, APPROVED, SIGNED, AND ADOPTED** at a duly called and convened regular meeting of the governing body of the City of Lovington this 22nd day of August, 2016.

**SIGNED:** \_\_\_\_\_  
Paul Campos , Chief Elected Official

**ATTEST:**

\_\_\_\_\_  
(Name and Title) Carol Ann Hogue, City Clerk

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Resolution 2016-78: Fiscal Agent Agreements  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** August 17, 2016

**STAFF SUMMARY:**

Resolution 2016-78 will authorize the Mayor to execute the attached fiscal agent services agreements between the City and the SENMEDD/COG for Capital Outlay Project Grants received in 2016. These projects are for the Radio Read Water Meter Project, the Well Field Development Project, the Evidence Storage and Impound Facility Project, and a second grant award for the new fire station.

The fiscal agent services agreement is required due to Executive Order 2013-006. Review by NMED and DFA find that the City does not meet the requirements stated in the EO. Although the City received an unmodified opinion (the best opinion), the fixed assets finding is determined to be the reason we are not meeting the requirements in the EO. This finding has already been corrected.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

Evidence Facility: \$3,000  
Well Field: \$2,000  
Radio Read Meters: \$4,400  
Fire Station: \$2,000

**ATTACHMENTS:**

Resolution 2016-78  
Fiscal Agent Agreements

**RECOMMENDATION:**

Motion to approve Resolution 2016-78

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-78**

**A RESOLUTION APPROVING FISCAL AGENT AGREEMENTS WITH THE SOUTHEASTERN  
NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT**

**WHEREAS**, the Commission of the City of Lovington of Lea County of the State of New Mexico shall enter into a Fiscal Agent Agreement with the Southeastern New Mexico Economic Development District, and

**WHEREAS**, the Agreement is for fiscal agent services for the follow Capital Outlay Grant Appropriations:

1. 16-A2269 – To purchase and install radio read water meters and related equipment
2. 16-A4045 – To plan, design, construct, and equip water well field improvements
3. 16-A2447 – To plan, design, construct and equip an evidence storage facility
4. 16-A4044 – To plan, design, construct and equip a fire staton

**NOW THEREFORE, BE IT RESOLVED** by the City of Lovington that Paul Campos, Mayor, is authorized to sign the fiscal agent agreement for this project.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

**SOUTHEASTERN NEW MEXICO  
ECONOMIC DEVELOPMENT DISTRICT/COUNCIL OF GOVERNMENTS  
CONTRACT FOR FISCAL AGENT SERVICES**

This agreement for fiscal agent services is between the City of Lovington (hereinafter called the **City**) and the **Southeastern New Mexico Economic Development District/Council of Governments**, a non-profit public corporation organized under the laws of the State of New Mexico (hereinafter called the **SNMEDD/COG**).

**RECITALS:**

The **CITY** has received funds and entered into an agreement with the State of New Mexico for funding from the 2016 Legislative Capital Outlay Appropriation in the amount **\$220,000** for **Project No: A2269-STB for Radio Read Water Meters install in the City of Lovington**. As a government member of the **SNMEDD/COG**, the **CITY** desires the **SNMEDD/COG** to provide certain fiscal agent services.

**AGREEMENT:**

The **CITY** agrees to engage the **SNMEDD/COG** and **SNMEDD /COG** hereby agrees to perform the following Scope of Services: (See Exhibit A)

1. **Payment:** The **CITY** shall pay **SNMEDD/COG** the sum of **\$ 4,400** (2%, of Project funded amount.) for the purpose of providing fiscal agent services to project. The fiscal agent fee shall be paid from the **CITY'S** general fund or other funds but shall not be paid from the funding awarded for the project from Legislative Capital Outlay funds.
2. **Compensation and method of payment:** Payments will be requested by the **SNMEDD/COG** and shall be made by the **CITY** according to the following schedule:  
**4 quarterly installments with the remaining installment paid upon close out of the project**
3. **Term of agreement:** This agreement shall be from **August 15, 2016 to July 31, 2018**, or completion of project, whichever comes first, and may be renewed or terminated upon the written agreement of both parties. Termination may be affected upon 30 days written notice from the date of agreement by both parties. Such early termination shall not nullify obligations incurred for performance or failure to perform prior to termination
4. **Indemnification and Claims:** The **SNMEDD/COG** shall defend, indemnify and hold the **CITY** harmless from all actions, proceedings, claims, demands, costs, damages, attorney's fees and all other liabilities and expenses of any kind from any source which may arise out of performance of this agreement, but only to the extent caused by the tortuous acts of omissions of the **SNMEDD/COG** or its agents or employees. The **CITY** shall hold harmless the **SNMEDD/COG** from claims that might arise in connection with work the **SNMEDD/COG** will perform under this contract. The **CITY** also agrees to pay for staff time at standard hourly billing rates, plus expenses at costs that might be required for expert testimony or any other court appearances, together with preparation time and legal costs that might arise because of the **SNMEDD/COG's** involvement in this assignment, whether subpoenaed by the **SNMEDD/COG** or any other group.

1. Status: The **SNMEDD/COG** and its agents and employees are independent contractors performing services for the CITY and are not employees of the CITY. The **SNMEDD/COG** and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of the state vehicles, or any other benefits afforded to employees of the CITY.
2. Assignment: The **SNMEDD/COG** shall not assign or transfer any interest in this agreement or assign any claims for money due or to become due under this agreement without the prior written approval of both parties.
3. Subcontracting: The **SNMEDD/COG** may not subcontract portions of the services to be performed under this agreement without the prior written approval of the CITY.
4. Bonding: The **SNMEDD/COG** shall provide, at the time of execution of the agreement evidence satisfactory to the CITY that all **SNMEDD/COG** personnel handling funds or authorizing payment of funds under this agreement are covered by fidelity bond satisfactory to the CITY.
5. Appropriations: The terms of this agreement are contingent upon sufficient funds being made available by the Legislature of the State of New Mexico or the federal government in the performance of this agreement. If sufficient funds are not made available by the legislature or the federal government this agreement shall terminate upon written notice being given by the CITY and shall be final.
6. Release: The **SNMEDD/COG**, upon final payment of all amounts due under this agreement, releases the CITY, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this agreement.
7. Authority: The **SNMEDD/COG** agrees not to purport to bind the CITY to an obligation not herein assumed unless the **SNMEDD/COG** has express written authority to do so, and then only within the strict limits of that authority.
8. Amendment: This agreement shall not be altered, changed or amended except by written instrument executed and signed by both parties.
9. Notice: The Procurement Code, sections 13-1-28 through 13-1-199 NMSA 1978, imposed civil and criminal penalties for its violation. Any property purchased and or procured in compliance with the Procurement Code. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
10. Equal Opportunity Compliance: **SNMEDD/COG** agrees to abide by all applicable federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations the **SNMEDD /COG** agrees to assure that no person shall, on the grounds of race, color, religion, national origin, sex, sexual orientation, age or handicap, be excluded from employment with or participation in, be denied the benefits of or be otherwise be subjected to discrimination under any program or activity performed under this agreement. If the **SNMEDD/COG** is found not to be in compliance with these requirements during the life of this agreement, the **SNMEDD/COG** agrees to take appropriate steps to correct these deficiencies.
11. Product of Services; Copyright: All materials developed or acquired by the **SNMEDD/COG** under this agreement shall become the property of the CITY and shall be delivered to the CITY no later than the termination date of this contract. Nothing produced in whole or in part by the **SNMEDD/COG** shall be the subject of the application for copy right by or on behalf of the **SNMEDD/COG**.
12. Applicable Law: This agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, THE PARTIES HERETO EXECUTED THIS AGREEMENT  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO

BOARD OF DIRECTORS  
SOUTHEASTERN NEW MEXICO  
ECONOMIC DEVELOPMENT  
DISTRICT/  
COUNCIL OF GOVERNMENTS

By: \_\_\_\_\_  
Chief Elected Official or  
Authorized Staff

By: \_\_\_\_\_  
Interim Executive Director  
SNMEDD/COG

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

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

**EXHIBIT A**  
**SCOPE OF SERVICES**

The **Southeastern New Mexico Economic Development District/Council of Governments** will provide the following administrative services for the CITY OF LOVINGTON

---

1. Act as liaison between New Mexico Environment Department and the City of Lovington
2. Comply with construction of public improvements requirements and compliance with federal and state laws and regulations
3. Advise on procurement methods available
4. Prepare professional service and contract documents in accordance with mandatory applicable federal law and regulations
5. Secure a Notice of Obligation with the funding agency
6. Review all procurement documentation and submit to funding agency
7. Prepare pay requests
8. Preparation and submittal of close-out documents
9. Compliance with New Mexico State Audit Rules for this project
10. Ensure that grant funds are expended in compliance with all applicable laws, regulations and grant agreement and the transactions are appropriately accounted for in compliance with such laws, regulations and grant agreement.
11. Ensure safeguarding of grant funds and assets acquired with grant funds and proper accounting thereof in compliance with applicable laws, regulations and grant agreement.

**SOUTHEASTERN NEW MEXICO  
ECONOMIC DEVELOPMENT DISTRICT/COUNCIL OF GOVERNMENTS  
CONTRACT FOR FISCAL AGENT SERVICES**

This agreement for fiscal agent services is between the City of Lovington (hereinafter called the **City**) and the **Southeastern New Mexico Economic Development District/Council of Governments**, a non-profit public corporation organized under the laws of the State of New Mexico (hereinafter called the **SNMEDD/COG**).

**RECITALS:**

The **CITY** has received funds and entered into an agreement with the State of New Mexico for funding from the 2016 Legislative Capital Outlay Appropriation in the amount **\$100,000** for **Project No: SAP 16-A4045-STB for Water Well Field Improvements in the City of Lovington**. As a government member of the **SNMEDD/COG**, the **CITY** desires the **SNMEDD/COG** to provide certain fiscal agent services.

**AGREEMENT:**

The **CITY** agrees to engage the **SNMEDD/COG** and **SNMEDD /COG** hereby agrees to perform the following Scope of Services: (See Exhibit A)

1. **Payment:** The **CITY** shall pay **SNMEDD/COG** the sum of **\$ 2,000** (2%, of Project funded amount.) for the purpose of providing fiscal agent services to project. The fiscal agent fee shall be paid from the **CITY'S** general fund or other funds but shall not be paid from the funding awarded for the project from Legislative Capital Outlay funds.
2. **Compensation and method of payment:** Payments will be requested by the **SNMEDD/COG** and shall be made by the **CITY** according to the following schedule:  
**4 quarterly installments with the remaining installment paid upon close out of the project**
3. **Term of agreement:** This agreement shall be from **August 15, 2016 to July 31, 2018**, or completion of project, whichever comes first, and may be renewed or terminated upon the written agreement of both parties. Termination may be affected upon 30 days written notice from the date of agreement by both parties. Such early termination shall not nullify obligations incurred for performance or failure to perform prior to termination
4. **Indemnification and Claims:** The **SNMEDD/COG** shall defend, indemnify and hold the **CITY** harmless from all actions, proceedings, claims, demands, costs, damages, attorney's fees and all other liabilities and expenses of any kind from any source which may arise out of performance of this agreement, but only to the extent caused by the tortuous acts of omissions of the **SNMEDD/COG** or its agents or employees. The **CITY** shall hold harmless the **SNMEDD/COG** from claims that might arise in connection with work the **SNMEDD/COG** will perform under this contract. The **CITY** also agrees to pay for staff time at standard hourly billing rates, plus expenses at costs that might be required for expert testimony or any other court appearances, together with preparation time and legal costs that might arise because of the **SNMEDD/COG's** involvement in this assignment, whether subpoenaed by the **SNMEDD/COG** or any other group.

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3. Subcontracting: The **SNMEDD/COG** may not subcontract portions of the services to be performed under this agreement without the prior written approval of the CITY.
4. Bonding: The **SNMEDD/COG** shall provide, at the time of execution of the agreement evidence satisfactory to the CITY that all **SNMEDD/COG** personnel handling funds or authorizing payment of funds under this agreement are covered by fidelity bond satisfactory to the CITY.
5. Appropriations: The terms of this agreement are contingent upon sufficient funds being made available by the Legislature of the State of New Mexico or the federal government in the performance of this agreement. If sufficient funds are not made available by the legislature or the federal government this agreement shall terminate upon written notice being given by the CITY and shall be final.
6. Release: The **SNMEDD/COG**, upon final payment of all amounts due under this agreement, releases the CITY, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this agreement.
7. Authority: The **SNMEDD/COG** agrees not to purport to bind the CITY to an obligation not herein assumed unless the **SNMEDD/COG** has express written authority to do so, and then only within the strict limits of that authority.
8. Amendment: This agreement shall not be altered, changed or amended except by written instrument executed and signed by both parties.
9. Notice: The Procurement Code, sections 13-1-28 through 13-1-199 NMSA 1978, imposed civil and criminal penalties for its violation. Any property purchased and or procured in compliance with the Procurement Code. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
10. Equal Opportunity Compliance: **SNMEDD/COG** agrees to abide by all applicable federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations the **SNMEDD /COG** agrees to assure that no person shall, on the grounds of race, color, religion, national origin, sex, sexual orientation, age or handicap, be excluded from employment with or participation in, be denied the benefits of or be otherwise be subjected to discrimination under any program or activity performed under this agreement. If the **SNMEDD/COG** is found not to be in compliance with these requirements during the life of this agreement, the **SNMEDD/COG** agrees to take appropriate steps to correct these deficiencies.
11. Product of Services; Copyright: All materials developed or acquired by the **SNMEDD/COG** under this agreement shall become the property of the CITY and shall be delivered to the CITY no later than the termination date of this contract. Nothing produced in whole or in part by the **SNMEDD/COG** shall be the subject of the application for copy right by or on behalf of the **SNMEDD/COG**.
12. Applicable Law: This agreement shall be governed by the laws of the State of New Mexico.

IN WITNESS WHEREOF, THE PARTIES HERETO EXECUTED THIS AGREEMENT  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO

BOARD OF DIRECTORS  
SOUTHEASTERN NEW MEXICO  
ECONOMIC DEVELOPMENT  
DISTRICT/  
COUNCIL OF GOVERNMENTS

By: \_\_\_\_\_  
Chief Elected Official or  
Authorized Staff

By: \_\_\_\_\_  
Interim Executive Director  
SNMEDD/COG

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

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

**EXHIBIT A**  
**SCOPE OF SERVICES**

The **Southeastern New Mexico Economic Development District/Council of Governments** will provide the following administrative services for the CITY OF LOVINGTON

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1. Act as liaison between New Mexico Environment Department and the City of Lovington
2. Comply with construction of public improvements requirements and compliance with federal and state laws and regulations
3. Advise on procurement methods available
4. Prepare professional service and contract documents in accordance with mandatory applicable federal law and regulations
5. Secure a Notice of Obligation with the funding agency
6. Review all procurement documentation and submit to funding agency
7. Prepare pay requests
8. Preparation and submittal of close-out documents
9. Compliance with New Mexico State Audit Rules for this project
10. Ensure that grant funds are expended in compliance with all applicable laws, regulations and grant agreement and the transactions are appropriately accounted for in compliance with such laws, regulations and grant agreement.
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**SOUTHEASTERN NEW MEXICO  
ECONOMIC DEVELOPMENT DISTRICT/COUNCIL OF GOVERNMENTS  
CONTRACT FOR FISCAL AGENT SERVICES**

This agreement for fiscal agent services is between the City of Lovington (hereinafter called the **City**) and the **Southeastern New Mexico Economic Development District/Council of Governments**, a non-profit public corporation organized under the laws of the State of New Mexico (hereinafter called the **SNMEDD/COG**).

**RECITALS:**

The **CITY** has received funds and entered into an agreement with the State of New Mexico for funding from the 2016 Legislative Capital Outlay Appropriation in the amount **\$150,000** for **Project No: A2447 for an evidence storage facility and impound lot in the City of Lovington**. As a government member of the **SNMEDD/COG**, the **CITY** desires the **SNMEDD/COG** to provide certain fiscal agent services.

**AGREEMENT:**

The **CITY** agrees to engage the **SNMEDD/COG** and **SNMEDD /COG** hereby agrees to perform the following Scope of Services: (See Exhibit A)

1. **Payment:** The **CITY** shall pay **SNMEDD/COG** the sum of **\$ 3,000** (2%, of Project funded amount.) for the purpose of providing fiscal agent services to project. The fiscal agent fee shall be paid from the **CITY'S** general fund or other funds but shall not be paid from the funding awarded for the project from Legislative Capital Outlay funds.
  
2. **Compensation and method of payment:** Payments will be requested by the **SNMEDD/COG** and shall be made by the **CITY** according to the following schedule:  
**4 quarterly installments with the remaining installment paid upon close out of the project**
  
3. **Term of agreement:** This agreement shall be from **August 15, 2016 to July 31, 2018**, or completion of project, whichever comes first, and may be renewed or terminated upon the written agreement of both parties. Termination may be affected upon 30 days written notice from the date of agreement by both parties. Such early termination shall not nullify obligations incurred for performance or failure to perform prior to termination
  
4. **Indemnification and Claims:** The **SNMEDD/COG** shall defend, indemnify and hold the **CITY** harmless from all actions, proceedings, claims, demands, costs, damages, attorney's fees and all other liabilities and expenses of any kind from any source which may arise out of performance of this agreement, but only to the extent caused by the tortuous acts of omissions of the **SNMEDD/COG** or its agents or employees. The **CITY** shall hold harmless the **SNMEDD/COG** from claims that might arise in connection with work the **SNMEDD/COG** will perform under this contract. The **CITY** also agrees to pay for staff time at standard hourly billing rates, plus expenses at costs that might be required for expert testimony or any other court appearances, together with preparation time and legal costs that might arise because of the **SNMEDD/COG's** involvement in this assignment, whether subpoenaed by the **SNMEDD/COG** or any other group.

1. Status: The **SNMEDD/COG** and its agents and employees are independent contractors performing services for the CITY and are not employees of the CITY. The **SNMEDD/COG** and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of the state vehicles, or any other benefits afforded to employees of the CITY.
2. Assignment: The **SNMEDD/COG** shall not assign or transfer any interest in this agreement or assign any claims for money due or to become due under this agreement without the prior written approval of both parties.
3. Subcontracting: The **SNMEDD/COG** may not subcontract portions of the services to be performed under this agreement without the prior written approval of the CITY.
4. Bonding: The **SNMEDD/COG** shall provide, at the time of execution of the agreement evidence satisfactory to the CITY that all **SNMEDD/COG** personnel handling funds or authorizing payment of funds under this agreement are covered by fidelity bond satisfactory to the CITY.
5. Appropriations: The terms of this agreement are contingent upon sufficient funds being made available by the Legislature of the State of New Mexico or the federal government in the performance of this agreement. If sufficient funds are not made available by the legislature or the federal government this agreement shall terminate upon written notice being given by the CITY and shall be final.
6. Release: The **SNMEDD/COG**, upon final payment of all amounts due under this agreement, releases the CITY, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this agreement.
7. Authority: The **SNMEDD/COG** agrees not to purport to bind the CITY to an obligation not herein assumed unless the **SNMEDD/COG** has express written authority to do so, and then only within the strict limits of that authority.
8. Amendment: This agreement shall not be altered, changed or amended except by written instrument executed and signed by both parties.
9. Notice: The Procurement Code, sections 13-1-28 through 13-1-199 NMSA 1978, imposed civil and criminal penalties for its violation. Any property purchased and or procured in compliance with the Procurement Code. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.
10. Equal Opportunity Compliance: **SNMEDD/COG** agrees to abide by all applicable federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations the **SNMEDD /COG** agrees to assure that no person shall, on the grounds of race, color, religion, national origin, sex, sexual orientation, age or handicap, be excluded from employment with or participation in, be denied the benefits of or be otherwise be subjected to discrimination under any program or activity performed under this agreement. If the **SNMEDD/COG** is found not to be in compliance with these requirements during the life of this agreement, the **SNMEDD/COG** agrees to take appropriate steps to correct these deficiencies.
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IN WITNESS WHEREOF, THE PARTIES HERETO EXECUTED THIS AGREEMENT  
THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

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LEA COUNTY, NEW MEXICO

BOARD OF DIRECTORS  
SOUTHEASTERN NEW MEXICO  
ECONOMIC DEVELOPMENT  
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By: \_\_\_\_\_  
Interim Executive Director  
SNMEDD/COG

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

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

**EXHIBIT A**  
**SCOPE OF SERVICES**

The **Southeastern New Mexico Economic Development District/Council of Governments** will provide the following administrative services for the CITY OF LOVINGTON

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1. Act as liaison between New Mexico Department of Finance and Administration and the City of Lovington
2. Comply with construction of public improvements requirements and compliance with federal and state laws and regulations
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4. Prepare professional service and contract documents in accordance with mandatory applicable federal law and regulations
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ECONOMIC DEVELOPMENT DISTRICT/COUNCIL OF GOVERNMENTS  
CONTRACT FOR FISCAL AGENT SERVICES**

This agreement for fiscal agent services is between the City of Lovington (hereinafter called the **City**) and the **Southeastern New Mexico Economic Development District/Council of Governments**, a non-profit public corporation organized under the laws of the State of New Mexico (hereinafter called the **SNMEDD/COG**).

**RECITALS:**

The **CITY** has received funds and entered into an agreement with the State of New Mexico for funding from the 2016 Legislative Capital Outlay Appropriation in the amount **\$100,000** for **Project No: SAP 16-A4044-STB** to plan, design, construct and equip a fire station in the City of Lovington. As a government member of the **SNMEDD/COG**, the **CITY** desires the **SNMEDD/COG** to provide certain fiscal agent services.

**AGREEMENT:**

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1. **Payment:** The **CITY** shall pay **SNMEDD/COG** the sum of **\$ 2,000** (2%, of Project funded amount.) for the purpose of providing fiscal agent services to project. The fiscal agent fee shall be paid from the **CITY'S** general fund or other funds but shall not be paid from the funding awarded for the project from Legislative Capital Outlay funds.
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THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2016.

CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO

BOARD OF DIRECTORS  
SOUTHEASTERN NEW MEXICO  
ECONOMIC DEVELOPMENT  
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By: \_\_\_\_\_  
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By: \_\_\_\_\_  
Interim Executive Director  
SNMEDD/COG

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

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

**EXHIBIT A**  
**SCOPE OF SERVICES**

The **Southeastern New Mexico Economic Development District/Council of Governments** will provide the following administrative services for the CITY OF LOVINGTON

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1. Act as liaison between New Mexico Department of Finance and the City of Lovington
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CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-79: NMED Grant Agreement  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 17, 2016

**STAFF SUMMARY:**

Resolution 2016-79 will authorize the Mayor to sign and execute the grant agreement between the City and the NMED for the radio read water meter project.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

Grant funds of \$220,000 for the radio read water meter project.

**ATTACHMENTS:**

Resolution 2016-79  
Grant Agreement

**RECOMMENDATION:**

Motion to approve Resolution 2016-79

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**STATE OF NEW MEXICO  
DEPARTMENT OF ENVIRONMENT  
FUND 89200 CAPITAL APPROPRIATION PROJECT  
16-A2269-STB**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Department of Environment, Harold Runnels Building, Room S-2072, 1190 St. Francis Drive, Santa Fe, New Mexico, 87505, hereinafter called the "Department" or abbreviation such as "NMED", and City of Lovington, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2016, Chapter 81, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

**AGREEMENT**

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

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

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

**16-A2269 (\$220,000) APPROPRIATION REVERSION DATE: June 30, 2018**  
Laws of 2016, Chapter 81, Section 18, Paragraph 34, two hundred twenty thousand dollars (\$220,000), to purchase and install radio-read water meters and related equipment in Lovington in Lea county.

The Grantee's total reimbursements shall not exceed the appropriation amount two hundred twenty thousand dollars (\$220,000) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>1</sup>, if applicable, zero (\$0), which equals two hundred twenty thousand dollars (\$220,000) (the "Adjusted Appropriation Amount").

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<sup>1</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

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

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Attachments A and B set forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachments A and B impose more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachments A and B shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

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

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<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- a. must be approved by the applicable oversight entity (if any) in accordance with law; or
- b. if no oversight entity is required to approve of the transaction, the Department must approve of the transaction as complying with law.

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

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

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 4.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

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

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

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs including, but not limited to any costs associated with the Fiscal Agent.

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

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

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: _____	Grantee: _____
Name: _____	Name: _____
Title: _____	Title: _____
Address: _____	Address: _____
Email: _____	Email: _____
Telephone: _____	Telephone: _____
FAX: _____	FAX: _____

Fiscal Agent: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_  
Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
FAX: \_\_\_\_\_

Department:      NMED  
Name: Valerie Trujillo  
Title: Project Administrator  
Address: Construction Programs Bureau  
Harold Runnels Bldg, Room S-2072  
PO Box 5469  
Santa Fe, NM 87502  
Email: valerie.trujillo@state.nm.us  
Telephone: (505) 827-2958  
FAX: (505) 827-2837

Department:      NMED  
Name: Sara Rhoton  
Title: Project Manager  
Address: Construction Programs Bureau  
121 Tijeras Ave., NE, Suite 1000  
Albuquerque, NM 87102  
Email: Sara.Rhoton@state.nm.us  
Telephone: (505) 222-9568  
FAX: (505) 222-9510

The Grantee's designee in combination with the Fiscal Agent's designee shall have authority from Grantee to request disbursements. The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to

have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2018** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

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

#### **ARTICLE V. EARLY TERMINATION**

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

Early Termination includes:

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

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

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

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

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

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

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

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

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

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

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

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

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

**ARTICLE VII. AMENDMENT**

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

**ARTICLE VIII. REPORTS**

**A. Paper Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 2. The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

**B. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 2. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**C. Paperless Reporting**

In lieu of the paper reports described in subparagraphs A and B of this Article, the Grantee shall report periodic and final Project activity by entering such Project information as

the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The information currently required to be reported into the database is set forth in Exhibit 1. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, whichever ever first occurs.

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

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this Article VIII.

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

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 3. Payment requests are subject to the following procedures:

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

**B. Deadlines**

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

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

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

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

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

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to

Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

- (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."
- (iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance, written approval.
- (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to co-sign Requests for Payment along with the Fiscal Agent.
- (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

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

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

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

**ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

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

**ARTICLE XIII. LIABILITY**

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

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

Attachments A and B are incorporated by reference and made part of the Agreement. This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

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

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

“The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Lovington may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Lovington’s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Lovington or the NMED or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Lovington or the Department”

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

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

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

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

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

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

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

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

**ARTICLE XVIII. SEVERANCE TAX BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

**GRANTEE**

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

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

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

\_\_\_\_\_  
Date

**NEW MEXICO ENVIRONMENT DEPARTMENT**

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

Its: Cabinet Secretary or Deputy Cabinet Secretary

\_\_\_\_\_  
Date

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Resolution 2016-80: MOU for Fiscal Agent Services  
DEPARTMENT: Executive  
SUBMITTED BY: James R. Williams, City Manager  
DATE SUBMITTED: August 17, 2016

**STAFF SUMMARY:**

Resolution 2016-80 will authorize the Mayor to sign and execute the attached MOU between the City and the SENMEDD/COG for fiscal agent services. Although we have a professional services agreement with the COG, we are required by NMED to execute the attached MOU in the presented format. This is necessary in order to proceed with the grant providing funding for the radio read water meter project.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Resolution 2016-80  
MOU

**RECOMMENDATION:**

Motion to approve Resolution 2016-80

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-80**

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE  
CITY OF LOVINGTON AND THE SOUTHEASTERN NEW MEXICO ECONOMIC  
DEVELOPMENT DISTRICT/COUNCIL OF GOVERNMENTS FOR FISCAL AGENT SERVICES**

**WHEREAS**, in the Laws of 2016, Chapter 81, the Legislature made an appropriation to the New Mexico Environment Department; and

**WHEREAS**, the NMED is making funds available to the City in the form of a grant for the radio read water meter project; and

**WHEREAS**, the NMED has reviewed the City's most current audit and has determined the need for the City to utilize a fiscal agent for grant number 16-2269-STB.

**NOW THEREFORE, BE IT RESOLVED** by the City of Lovington that Paul Campos, Mayor, is authorized to sign and execute the Memorandum of Understanding between the City of Lovington and the Southeastern New Mexico Economic Development District/Council of Governments.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
City of Lovington (Grantee)**

**AND**

\_\_\_\_\_  
**(Fiscal Agent)**

The purpose of this Memorandum of Understanding (hereinafter "MOU") is to confirm that the Grantee, City of Lovington (hereinafter "Grantee") is working in collaboration with \_\_\_\_\_, the designated Fiscal Agent (hereinafter "Fiscal Agent"), for the administration of a New Mexico legislative special appropriation to the New Mexico Environment Department (hereinafter "NMED"). The special appropriation grant agreement number is 16-A2269-STB in the amount of \$220,000 and has been appropriated to purchase and install radio-read water meters and related equipment in Lovington in Lea county (hereinafter "Project").

It is mutually agreed that City of Lovington will determine the specific work to be completed, will oversee construction, and will own and operate the improvements resulting from completion of the Project. By this MOU, it is understood between the parties that \_\_\_\_\_ (Fiscal Agent) is authorized to act as the Fiscal Agent for the project, and will be responsible for administration, procurement, and payments related to the project. The governing board of City of Lovington will adopt a resolution appointing \_\_\_\_\_ (Fiscal Agent) as its Fiscal Agent and designating a signatory authority from \_\_\_\_\_ (Fiscal Agent) and a signatory authority from City of Lovington in accordance with terms of the NMED Grant Agreement. The resolution shall also designate a grantee representative from City of Lovington that is knowledgeable about the day to day activities relating to the Project.

The Fiscal Agent shall not be compensated from any grant funds for services rendered, or credited for services rendered, during the term of this MOU or during the duration of the Project.

This MOU shall be in effect for the duration of the grant agreement and terminates if the Grantee designates a new Fiscal Agent, or when the grant agreement expires or the project is complete and all appropriate close out documents are received, whichever comes first. The parties affirm their understanding and agreement by their signatures below. The parties may enter into a contractual agreement related to this project, but the terms of the agreement shall not conflict with the terms of this MOU or the Resolution.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this MOU as of the date of execution by the Fiscal Agent.

GRANTEE:

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

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

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

\_\_\_\_\_  
Date

FISCAL AGENT:

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

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

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

\_\_\_\_\_  
Date

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: Resolution 2016-81

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

**SUBJECT:** Resolution 2016-81: CDBG Contract Agreement for Fiscal Agent  
**DEPARTMENT:** Executive  
**SUBMITTED BY:** James R. Williams, City Manager  
**DATE SUBMITTED:** August 18, 2016

**STAFF SUMMARY:**

Resolution 2016-81 will authorize the Mayor to execute a Contract for Administrative Services between the City and COG for fiscal agent services. This cost was built into the grant the City recently received.

**FISCAL IMPACT:**

REVIEWED BY: Gary Lee Chapman  
Finance Director

\$19,852 - reimbursable through grant.

**ATTACHMENTS:**

Resolution 2016-81  
Contract

**RECOMMENDATION:**

Motion to approve Resolution 2016-81

\_\_\_\_\_  
Department Head

James R. Williams  
City Manager

**RESOLUTION OF THE CITY OF LOVINGTON  
LEA COUNTY, NEW MEXICO**

**RESOLUTION NO. 2016-81**

**A RESOLUTION APPROVING A CONTRACT FOR ADMINISTRATIVE SERVICES BETWEEN  
THE CITY OF LOVINGTON AND THE SOUTHEASTERN NEW MEXICO ECONOMIC  
DEVELOPMENT DISTRICT/COUNCIL OF GOVERNMENTS**

**WHEREAS**, the City of Lovington has entered into an agreement with the State of New Mexico for the implementation of the Community Development Block Grant Program pursuant to Title 1 of the Housing and Community Development Act of 1974; and

**WHEREAS**, the City desires to engage the SENMEDD/COG to render certain administrative services in connection with the CDBG program.

**NOW THEREFORE, BE IT RESOLVED** by the City of Lovington that Paul Campos, Mayor, is authorized to sign and execute the Contract for Administrative Services between the City and SENMEDD/COG, attached hereto for reference.

DONE THIS 22<sup>ND</sup> DAY OF AUGUST, 2016 at

City of Lovington  
New Mexico

\_\_\_\_\_  
Paul Campos, Mayor

ATTEST:

\_\_\_\_\_  
Carol Ann Hogue, City Clerk

### Exhibit 3-B

# CONTRACT FOR ADMINISTRATIVE SERVICES

Project 16-C-NR-I-01-G-05 Street & Sidewalk Improvements

Contract N°.      Project N°.     



Distribution to:

- Owner
- Consultant
- LGD
- Other

## Community Development Block Grant Program

This Agreement entered into this 1 day of September, 2016, by and between

the **“Grantee”**

and the **“Consultant”**

┌  
 City of Lovington  
 P.O. Box 1268  
 Lovington, NM 88260-1268

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┌  
 SNMEDD/COG  
 1600 SE Main, Suite D  
 Roswell, NM 88203

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[This document was prepared to be used with Community Development Block Grant and state funded projects. This document has important legal consequences; consultation with an Attorney is encouraged with respect to its completion or modification]

**PART I -- AGREEMENT**

This Agreement for professional services is by and between City of Lovington,  
*name of grantee*  
(hereinafter called the "Grantee" or "Owner") and SNMEDD/COG a corporation  
*name of consultant*  
organized under the laws of the State of New Mexico, (hereinafter called the "Consultant").

WITNESSETH THAT:

WHEREAS, Grantee has entered into an agreement with the State of New Mexico for the implementation of the Community Development Block Grant (CDBG) Program pursuant to Title 1 of the Housing and Community Development Act of 1974; and,  
WHEREAS, Grantee desires to engage Consultant to render certain administrative services in connection with its CDBG Program;

NOW, THEREFORE, the parties do mutually agree as follows:

1. Employment of Consultant

Grantee agrees to engage Consultant, and Consultant agrees to satisfactorily perform the following scope of services:

2. Scope of Services

- A. With the assistance of the grantee, help conduct public hearings. This includes, but is not limited to, tasks such as assisting with public hearings, preparing public notices, and documenting citizen input.
- B. Prepare Environmental Review Record for all activities. Responsibilities include making a recommendation to the local governing body as to a finding of the level of impact, preparation of all required public notices, preparation of the Request for Release of Funds, and obtaining adequate backup documentation. For activities which are not exempt from environmental assessments, an environmental assessment will be prepared. For activities which are exempt or categorically excluded from environmental assessments, a written Finding of Exemption will be prepared, which should identify the project or activity, and under which category of exemption it falls. Documentation of compliance with the requirements of historic preservation, flood plains and wetlands, and other applicable authorities must be included.
- C. Coordinate requests for payment with the grantee to insure consistency with the letter of credit procedures established for the CDBG program.

- D. Insure that the grantee has an acceptable financial management system for the CDBG program. An acceptable system includes, but is not limited to, cash receipts and disbursement journal and accompanying ledgers, and should conform to generally accepted principles of municipal accounting.
- E. Establish grantee project files. These must be maintained in compliance with all applicable state, local and federal regulations. Monitor project files throughout the program to insure they are complete and that all necessary documentation is being retained in the grantee's files.
- F. If applicable, assist grantee in complying with regulations governing land acquisition (real property, easements, rights of way, donation of property, etc.).
- G. Obtain contractor and subcontractor clearances from the state.
- H. Check weekly payrolls to insure compliance with wage decisions. Conduct on-site interviews and compare the results with appropriate payrolls.
- I. Monitor construction to insure compliance with Equal Opportunity and Labor Standards Provisions.
- J. Make progress inspections and certify partial payment requests.
- K. Accompany design professional on final inspection and issue a final certificate of payment.
- L. Prepare close-out documents to include Project Completion Report, Final Wage Compliance Report, and Certificates of Completion.

Services in each of the task areas above shall be performed at the direction of the Director, Department of Community Development, or his designated representative.

### 3. Time of Performance

The Consultant shall commence work on 9/1/16, and shall continue providing services in the sequence appropriate to Grantee's CDBG project. All services shall be completed no later than twenty four months from the date of this Agreement.

### 4. Access to Information

It is agreed that all available information, data, reports, records and maps shall be furnished to Consultant by Grantee and its agencies. No charge will be made to Consultant for such information, and Grantee and its agencies will cooperate with Consultant to facilitate the performance of the work described in this Agreement.

### 5. Compensation and Method of Payment

The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed nineteen thousand eight hundred fifty-two dollars ( \$ 19,852.00 ) for all services, including travel, per diem and other expenses. All work will be performed on a time and materials basis. Consultant time

for principal and staff will be provided at their respective rates of pay times for direct personal expense. Ten percent (10%) of the total contract amount shall be retained by Grantee until formal closeout of the project by the state.

Travel at the lowest practicable class of common carrier and per diem costs at the amount set in Grantee's mileage and per diem regulations for food, lodging and incidental expenses are INCLUDED in the maximum contract amount.

For payments due, Consultant shall submit monthly invoices to Grantee for costs incurred in that period. Invoices shall itemize the tasks completed, person-days provided, and shall list the travel and per diem costs incurred in performing the tasks. The invoice shall be payable to the Consultant within 20 days of receipt by Grantee.

The Consultant agrees to keep accurate records of all time and expenses allocated to the work. Such records shall be kept in the office of the Consultant and shall be made available to Grantee for inspection and copying upon reasonable request.

#### 6. Ownership of Documents

All documents and data produced are the property of the Grantee. Consultant may retain reproducible copies.

#### 7. Indemnification

Consultant shall comply with the requirements of all applicable laws, rules, and regulations, and shall assume full responsibility for payment of federal, state, and local taxes or contributions imposed or required under Social Security, Workman's Compensation, and income tax laws. Consultant shall hold Grantee harmless with respect to any damages, expenses, or claims arising from or in connection with any negligent acts, errors or omissions performed by Consultant under this Agreement. This shall not be construed as a limitation of Consultant's liability under this Agreement, or as otherwise provided by law.

#### 8. Expert Testimony

Grantee agrees to pay for additional staff time, at the contract hourly billing rates, plus expenses at cost, that might be required for expert testimony or court appearances, including preparation time and legal costs that might arise because of Consultant's involvement in this assignment, whether subpoenaed by the Grantee or any other party.

#### 9. Terms and Conditions

This Agreement is subject to the provisions titled "Part II, Federal Terms and Conditions for Professional Services" consisting of six (6) pages, attached hereto and incorporated herein by reference.

10. Address for Notices and Communications

Grantee: City of Lovington  
James Williams, City Mgr  
P.O. Box 1268  
Lovington, NM 88260

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Consultant: SNMEDD/COG  
Dora Batista  
1600 SE Main, Suite D  
Roswell, NM 88203

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11. Captions

Each paragraph of this Agreement has been supplied with a caption only to serve as a guide to the contents. The caption does not control the meaning of a paragraph or in any way determine its interpretation or application.

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_

Grantee: City of Lovington

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

Title: Mayor

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

Consultant: SNMEDD/COG

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

Title: Interim Executive Director

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

**PART II**  
**FEDERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES**

State administered Community Development Block Grant monies are federal funds. Section 13-1-30B NMSA 1978 of the Procurement Code stipulates: "When a procurement involves the expenditure of federal funds, the procurement shall be conducted in accordance with mandatory applicable federal law and regulations. When mandatory applicable federal law or regulations are inconsistent with the provisions of the Procurement Code, compliance with federal law or regulations shall be compliance with the Procurement Code." The applicable governing federal procurement standards are defined in OMB Circular A-102, Attachment O. When federal and state procurement policies are different, the more restrictive policies apply so long as they are consistent with Circular A-102 standards.

1. **Termination of Contract for Cause** - If, through any cause, the Consultant shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Consultant shall violate any of the covenants, agreements, or stipulations of this Contract, the Owner shall there-upon have the right to terminate this Contract by giving written notice to the Consultant of such termination and specifying the effective date thereof, at least five days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys and reports prepared by the Consultant under this Contract shall, at the option of the Owner, become its property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

Notwithstanding the above, the Consultant shall not be relieved of liability to the Owner damages sustained by the Owner by virtue of any breach of the Contract by the Consultant, and the Owner may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the Owner from the Consultant is determined.

2. **Termination for Convenience of the Owner** - The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the Consultant. If the Contract is terminated by the Owner as provided herein, the Consultant will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Consultant, paragraph 1 hereof relative to termination shall apply.
3. **Changes** - The Owner may, from time to time, request changes in the scope of the services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant compensation, which are mutually agreed upon by and between the Owner and the Consultant, shall be incorporated in written amendments to this contract.
4. **Personnel** -
  - a. The Consultant represents that he has, or will secure at his own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner.
  - b. All of the services required hereunder will be performed by the Consultant or

under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

- c. None of the work or services covered by this contract shall be subcontracted without the prior written approval of the Owner. Any work or services subcontracted hereunder be specified by written contract or agreement and shall be subject to each provision of this Contract.
5. **Assignability** - The Consultant shall not assign any interest on this Contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the Owner thereto: Provided, however, that claims for money by the Consultant from the Owner under the Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the Owner.
6. **Reports and Information** - The Consultant, at such times and in such forms as the Owner may require, shall furnish the Owner such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.
7. **Records and Audits** - The Consultant shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner and to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the Owner or any authorized representative, and will be retained for six (6) years after the expiration of this Contract unless permission to destroy them is granted by the Owner and the funding agency.
8. **Findings Confidential** - All of the reports, information, data, etc., prepared or assembled by the Consultant under this Contract are confidential and the Consultant agrees that they shall **not** be made available to any individual or organization without the prior written approval of the Owner.
9. **Copyright** - No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the Consultant.
10. **Compliance with Local Laws** - The Consultant shall comply with all applicable laws, ordinances and codes of the State and the Owner, and the Consultant shall save the Owner harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Contract.
11. **Equal Employment Opportunity** - During the performance of this Contract, the Consultant agrees as follows:
  - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, sex, color or national origin. The Consultant

will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, sex, color or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Owners setting forth the provisions of this non-discrimination clause.

- b. The Consultant will, in all solicitation or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, or national origin.
- c. The Consultant will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- d. The Consultant will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
- e. The Consultant will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the Owner's representative, the funding agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the Consultant's non-compliance with the equal opportunity clauses of this Agreement or with any of such rules, regulations or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the Consultant may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g. The Consultant will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the Owners's representative may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such

direction by the Owner, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

12. **Civil Rights Act of 1964** - Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

13. **Section 109 of the Housing and Community Development Act of 1974**

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

14. **"Section 3" Compliance in the Provision of Training, Employment and Business Opportunities**

- a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.
- b. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 CFR 135, and all applicable rules and orders of the Department issued thereunder prior to the execution of this contract. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these requirements.
- c. The Consultant will send to each labor organization or representative or workers with which he has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.
- d. The Consultant will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Consultant will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to

comply with the requirements of these regulations.

- e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.
15. **Interest of Members of the Owner** - No member of the governing body of the Owner and no other officer, employee, or agent of the Owner who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the Consultant shall take appropriate steps to assure compliance.
16. **Interest of other Local Public Officials** - No member of the governing body of the Owner and no other public official of the Owner, who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this Contract; and the Consultant shall take appropriate steps to assure compliance.
17. **Interest of Consultant and Employees** - The Consultant covenants that he presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Consultant further covenants that in the performance of this Contract, no person having any such interest shall be employed.
18. **Access to Records** - The State funding (grantor) agency, the Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Engineer which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions.

All records connected with this contract will be maintained in a central location by the Owner and will be maintained for a period of six (6) years from the official date of close-out of the grant.

CITY OF LOVINGTON  
COMMISSION STAFF SUMMARY FORM



MEETING DATE: August 22, 2016

RESOLUTION  ORDINANCE  PROCLAMATION  INFORMATION  OTHER ACTION

SUBJECT: Accounts Payable  
DEPARTMENT: Finance  
SUBMITTED BY: Gary Lee Chapman, Finance Director  
DATE SUBMITTED: August 17, 2016

**STAFF SUMMARY:**

The Finance Department has submitted the Accounts Payable for Commission review and approval.

**FISCAL IMPACT:**

See Accounts Payable Detail

REVIEWED BY: Gary Lee Chapman  
Finance Director

**ATTACHMENTS:**

Accounts Payable Detail

**RECOMMENDATION:**

Motion to approve Accounts Payable

Gary Lee Chapman  
Department Head

James R. Williams  
City Manager

City of Lovington (New)  
 Summary A/P Ledger - A/P Summary CMeeting - General  
 From 8/1/2016 Through 8/31/2016

Vendor Name	Dept Code	Current Balance
4River Equipment		817.00
A-Tech Air Cond. & Heating		417.20
After Hours Locksmith		150.02
AGI Industries Inc		529.56
Alsco		932.54
American Equipment		1,938.16
Amsterdam		269.08
Animal Sheltering Board		50.00
Art's D.O.T & Safety Lovington		48.26
Assurance Fire, Safety & Train		235.00
Atco International		311.00
Benchmark		117.28
BenMark Supply Company Inc.		1,116.00
Blaine Industrial Supply		887.81
Bob's Thriftway		157.08
Bound Tree Medical, LLC		1,811.84
Breen Glass Service		366.50
Bruce's Pest Control		214.50
C & S Motor Parts Co.		7.02
C E S - Ramirez & Sons Commercial Street Project		12,278.24
Cardinal Laboratories		704.96
Certified Laboratories		412.47
Cowboys Corner		31.95
Curtis & Curtis, Inc		2,207.50
Dana Kepner Co.		1,449.04
Dry Lands Brewing - Economic Development Project Agreement		80,000.00
Farmer Brothers Company		137.45
Federal Express Services		39.10
Federal Licensing, Inc.		110.00

City of Lovington (New)  
Summary A/P Ledger - A/P Summary CMeeting - General  
From 8/1/2016 Through 8/31/2016

Forrest Tire Co.	5.17
Galls/Quartermaster	854.66
Gebo Credit Corporation	37.86
General Welding Supply	1,749.00
Haarmeyer Electric	1,799.43
Haller-Phillips, Inc.	243.31
Heidel, Samberson, Newell ,Cox	2,630.31
Higginbotham-Bartlett Co.	1,414.93
High Plains Refrigeration, Inc	128.18
Hospital Services Corporation	41.85
In The Swim	134.39
Jim Trujillo	128.25
Kleen-Tech Services Corp.	5,489.76
Lea County Treasurer	2,783.75
Life-Assist, Inc.	206.00
Lovington Auto Supply	476.52
Lovington Leader	769.80
Lovington Tire Service, Inc.	1,243.99
Lyle Signs	366.00
Marker Services, LLC	208.49
Mustang Country	696.60
NM League of Zoning Officials	50.32
NMWWA-SE Section	126.00
Odessa Pumps & Equipment	390.94
Overhead Door Co.	516.81
P & D Petroleum, Inc	451.25
Patriot Pipe & Supply LTD	27.60
Pettigrew & Associates, P. A.	2,250.27
Polydyne Inc.	504.00
Pro-Treat Power Equipment	664.73
R & C Consulting & Investigati	17,415.00
R & M Sign Design	50.00

City of Lovington (New)  
Summary A/P Ledger - A/P Summary CMeeting - General  
From 8/1/2016 Through 8/31/2016

Recorded Books LLC	1,000.00
Roberts Oil & Lube	675.04
Share Corporation	702.57
Sharon's Alterations	10.67
SHOPKO Hometown	142.24
Solid Waste Authority	7,361.34
Southwest Polygraph	100.00
Stanley Convergent Security	656.91
Staples Advantage	315.79
Steel Depot-Hobbs	50.34
Strong Electric	1,380.54
Stryker Finance	22,702.81
Sunbird Home Resort Products	60.00
SWAT, LLC	453.95
Swissphone	211.59
SYSCO West Texas, Inc.	763.40
Tom's Plumbing	361.97
TWS, Inc.	400.90
Tyler Technologies	2,858.09
U S Food Service	1,108.11
Unifirst Corp.	402.22
Valentine Auto Service	121.60
Vortex Aquatic Structures Intn	58,015.59
W-H-B, Inc.	361.97
Wylie Manufacturing Co.	81.36
XEROX Corporation	<u>20.81</u>
Report Balance	<u><u>252,112.00</u></u>

c