

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

2 **RESOLUTION NO. 2016-48**

3 **INTRODUCED BY:**

4  
5 Councilor Ronald S. Trujillo

6 Councilor Joseph M. Maestas

7  
8  
9  
10 **A RESOLUTION**

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

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

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

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

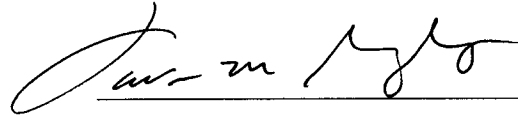
24 **NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE**  
25 **CITY OF SANTA FE** that the city of Santa Fe:

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

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

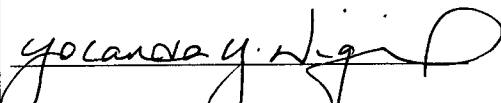
6 3. Requests the State Tourism Department, Litter Control Beautification Section to consider  
7 and approve said application and program. Said program is in accordance with the Act and  
8 related regulations governing the use and expenditure of said funds.

9 PASSED, APPROVED and ADOPTED this 23<sup>rd</sup> day of June, 2016.

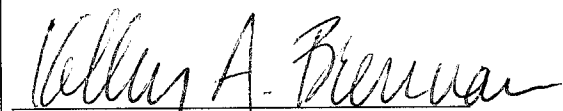
10   
11 \_\_\_\_\_

JAVIER M. GONZALES, MAYOR

12 ATTEST:

13  
14   
15 \_\_\_\_\_  
YOLANDA Y. VIGIL, CITY CLERK

16 APPROVED AS TO FORM:

17   
18 \_\_\_\_\_  
19 KELLEY A. BRENNAN, CITY ATTORNEY

Grant No.: 17-418-6002-0041

**LITTER CONTROL & BEAUTIFICATION  
GRANT AGREEMENT**

THIS AGREEMENT, entered into between the State of New Mexico, New Mexico Tourism Department, "Department" and the Keep Santa Fe Beautiful. "Public Entity". Department and Public Entity each a "Party" and collectively "Parties".

**RECITALS**

The purpose of the "New Mexico Litter Control and Beautification Act," NMSA 1978, § 67-16-1 et. seq., "Act," is to control litter by authorizing the Department to eliminate litter from New Mexico to the maximum practical extent through a State-coordinated plan of education, control, prevention, and elimination;

The Act, NMSA 1978, § 67-16-12, provides that the Department may allocate up to fifty percent (50%) of the funds generated annually by the Act to local governments to establish and sustain local Keep America Beautiful system programs;

The Act provides that the Department may allocate up to sixty percent (60%) of fees generated annual to local governments to establish a youth employment program to aid in litter control and beautification projects;

The Public Entity is a local government as defined under the Act;

Exhibit 1, Grant Award Distribution are incorporated by reference; and

The Parties hereto intend to fulfill the requirements of the Act through this Agreement.

THEREFORE, pursuant to the Act, the Parties agree as follows:

**SECTION ONE- The Department**

A. The Department shall:

1. Allocate funds generated by the Act and pay to the Public Entity an amount not to exceed \$56,500 ("Funds") to establish or sustain a local Keep America Beautiful system program; and/or to fund a youth employment program to aid in litter control and beautification projects as stipulated in Exhibit 1.

2. Reimburse Funds on a quarterly basis, quarters are designated as: July through September; October through December; January through March; and April through June.

3. Not disburse any Funds until the Public Entity submits proper written documentation of its expenditures.

4. Allow the Public Entity to request reallocation of Funds between the program resources allocation to the youth employment allocation, based on the Public Entity's need to support local youth interests. Provided the request is in writing, submitted before request for reimbursement and includes specific reference to line items from which Funds will be debited, information about how those Funds will be spent, where the Funds will be credited and any other information requested by the Department.

5. Amend the Public Entity's budget if the Department approves a written request to amend.

## **SECTION TWO- The Public Entity**

### **A. The Public Entity shall:**

1. Perform and complete the Litter Control, Graffiti Eradication, Beautification, Recycling, and related community programs, projects and events as in furtherance of the statewide Keep America Beautiful system programs, pursuant to the Act, and as set forth in Exhibit 1.

2. Spend the Funds allocated as required by, and according to, the provisions of the Act, the applicable rules and regulations of the Department, and this Agreement. The Public Entity shall only expend Funds allocated under this Agreement on equipment, projects, promotional programs, services, education and other matters, only if they are related to litter prevention, elimination, control programs, beautification, and recycling.

3. Complete online reimbursement requests on or before the tenth (10th) calendar day after the end of each quarter, EXCEPT FOR THE FOURTH QUARTER. Public Entity must submit its final requests for reimbursement for the fourth quarter submitted no later than June tenth (10th), except for request on reimbursement for youth employment, which Public Entity may submit by July third (3rd). The first page of all reimbursement requests must be printed, signed and returned to Department no more than five (5) days following each of the above deadlines.

4. Include the following in its requests for reimbursement to the Department:
- a. A detailed accounting of expenditures of all Funds allocated and paid by line item;
  - b. Copies of the detailed Public Entity purchase documents, receipts and proof of payment for equipment, materials, or supplies purchased, (including model and serial numbers, if any);
  - c. Copies of the payroll for youth employees;
  - d. A Final Performance and Accounting Report as defined below, must accompany all fourth quarter requests; and
  - e. Any other information required by the Department.

5. Make reallocation requests in writing to the Department pursuant Section 1 (A)(5), prior to submitting the request for reimbursement.

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

7. Include the following in its Final Performance and Accounting Report:
- a. An accounting of expenditures of all Funds by line item;
  - b. A certification that Public Entity used purchased equipment only for the purpose of fulfilling this Agreement and for no other purpose;
  - c. A detailed summary of accomplishments towards the objectives and goals of the program;
  - d. Any other information necessary to explain the program accomplishments; and
  - e. Any other information required by the Department.

8. Use the equipment purchased in whole or part with the Funds only for the anti-litter and beautification purposes as required by the Act.

9. Not assign or transfer any interest in this Agreement including any claims or money due or that may become due under this Agreement.

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

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

12. Not currently have and not acquire any interest, direct or indirect, that would cause a conflict of interest in any manner or degree in relation to the performance or services required under this Agreement.

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

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

B. A Public Entity's illegal or unauthorized expenditures under this Agreement shall constitute a debt to the State of New Mexico, owed by Public Entity. In the case of such debt, the

Parties agree that the Department may elect to withhold or recover Funds from the Public Entity, its successors, or assignees or recover through appropriate legal action.

### **SECTION THREE- General Obligations**

A. The Parties shall adhere to the requirements set forth in Department's Litter Control and Beautification Grant Requirements Rule for grant approval, allocation, and reporting.

B. Direct costs of travel or per diem incurred by the Public Entity shall be the sole responsibility of the Public Entity. A Public Entity may propose and request direct and separate travel reimbursement, in advance, for cost associated with conferences, trainings, workshops or other meetings that directly benefit attendees in relationship to the programs they implement and oversee with Funds received under this Agreement. Reimbursement requests for direct costs of travel or per diem for one attendee per conference, etc. *must be* accompanied by a written report including the following items: (1) an evaluation of each session attended, (2) one key learning from each and, (3) at least three (3) ideas for how to incorporate those concepts into future initiatives. Receipts submitted without the proper documentation demonstrating conference attendance will not be reimbursed.

C. Equipment purchased with Funds that has a service life longer than this Agreement shall be used for agreed upon purposes for the length of that equipment's service life. Before the Department reimburses the Public Entity's expenses for such equipment purchased for more than one thousand dollars (\$1,000.00), the Parties shall agree and specify its expected service life based on the kind of equipment, amount of anticipated use, service that will be performed, and the equipment's normal service life.

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

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

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

F. Any unexpended or unencumbered balance upon termination of this Agreement allocated by the Department will revert back to the Department.

#### **SECTION FOUR- Amendment**

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

B. All properly submitted and approved reallocations for Funds do not require a formal amendment to this Agreement, provided the Department does not increase Public Entity's allocation.

#### **SECTION FIVE- Appropriation**

A. The Department reserves the right to terminate this Agreement if Funds appropriated by the Legislature are insufficient to fulfill its obligations under this Agreement.

B. The Department's decision as to whether Funds under the Act are sufficient for fulfillment of this Agreement shall be final.

#### **SECTION SIX – Term and Termination**

A. This Agreement shall not take effect until executed by the Parties hereto. This Agreement shall terminate on June 30, 2017, unless terminated pursuant to the following paragraphs of this Section.

B. The Department may terminate this Agreement if Public Entity fails to commence program activities by the end of the second quarter of the fiscal year or have a plan to complete program activities by the last day of the tenth (10<sup>th</sup>) month of the fiscal year, if Public Entity fails to communicate its intentions or does not comply with this Agreement as determined by the Department.

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

#### **SECTION SEVEN – Integration**

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

**SECTION EIGHT – Controlling Law**

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

**SECTION NINE – Intent Of Agreement**

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

**SECTION TEN – New Mexico Tort Claims Act**

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

**SECTION ELEVEN – Equal Opportunity Compliance**

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



**SECTION TWELVE – Civil Rights Laws And Regulation Compliance**

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

**[The remainder of this page is intentionally left blank.]**

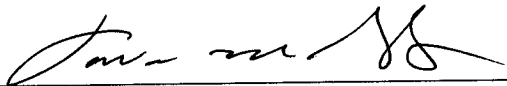
The Parties have executed this Agreement as of the date of execution by the Department.

New Mexico Tourism Department

By: \_\_\_\_\_  
Rebecca Latham  
Cabinet Secretary

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

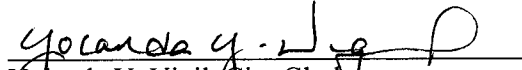
Public Entity

By: 

Date: 6/28/16

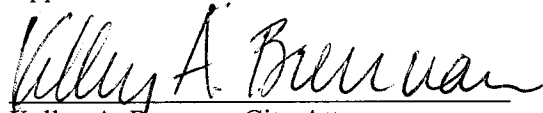
Title: Mayor

Attest:

  
Yolanda Y. Vigil, City Clerk  
CC mtg. 6/23/16  
6-29-16

Date

Approved as to form:

  
Kelley A. Brennan, City Attorney

Approved:

 6-28-2016  
Oscar S. Rodriguez, Director of Finance