

LICENSE AGREEMENT FOR ENCROACHMENTS ONTO CITY RIGHT-OF-WAY

THIS AGREEMENT, made this _____ day of September, 2020, by and between the City of Santa Fe, New Mexico, a Municipal Corporation, (the "City"), and the State of New Mexico, acting by and through the Department of Cultural Affairs, a political subdivision of New Mexico (the "Licensee"), whose address is Bataan Memorial Building, 407 Galisteo Street, Suite 260, Santa Fe, NM 87501.

WITNESSETH:

In consideration of the Licensee's promises herein, the City hereby gives the Licensee a License, revocable and terminable as hereinafter provided, to enter on the property of the City as follows:

1. **PREMISES.** Subject to all of the terms and conditions of this License Agreement, the City allows the Licensee to use and occupy that portion of City right-of-way located at the northwest corner of the intersection of Garfield Street and Guadalupe Street. The area of encroachment consists of approximately 5900 square feet as shown on **Exhibit "A"**, attached hereto and made a part hereof (the "Premises").
 - a. The City agrees to allow, and hereby allows, the Licensee to use the Premises for the purpose of construction staging, and storage, during construction of the Vladem Contemporary Museum, and creating and maintaining landscaping and improvements for the Vladem Contemporary. No other use by the Licensee of the right-of-way shall be allowed.
 - b. No other uses shall be allowed in any manner by the Licensee beyond those actions necessary to create and maintain the landscaping and site improvements.
 - c. Licensee's use of the Premises for any purpose not provided for herein shall be deemed a material and substantial breach of this Agreement and shall constitute grounds for injunctive relief by the City.
2. **TERM.** This License Agreement shall commence on the date entered above, which shall be no earlier than the date of execution by all parties, and shall continue until this License Agreement is terminated as provided in Part 4 below.
3. **PAYMENT.** The City hereby waives its standard fees for this License Agreement; provided, however, in the place and stead of those fees, the City accepts as full consideration for granting this License, the Licensee's performance of the following actions, at the Licensee's sole expense, and in conformity with the requirements of Section 10 below:

- a. relocate the existing bus stop, no later than the substantial completion of the construction of the Vldem Contemporary Museum, to the location depicted on Exhibit B attached hereto and incorporated herein by reference[or: to a location acceptable to the City of Santa Fe Transit Division];
- b. reconstruct the sidewalk at the southwest corner of the intersection of Guadalupe and Montezuma Street to be ADA compliant no later than the substantial completion of the construction of the Vldem Contemporary Museum, to the reasonable specifications timely provided by the City in the location depicted on Exhibit B; and
- c. relocate the existing fire hydrant and/or the crosswalk signal pedestal at the southwest corner of the intersection of Guadalupe and Montezuma Streets, as approved by the City of Santa Fe Traffic/Engineering Division, no later than the substantial completion of the construction of the Vldem Contemporary Museum to the location depicted on Exhibit B.

4. TERMINATION.

- a. If the City faces a health, safety, or operational need to use the Premises that conflicts with this license, the City may revoke this License Agreement or reduce the area of the Premises, at any time upon thirty (30) days written notice to the Licensee.
- b. The Licensee may terminate this License Agreement at any time upon six (6) month written notice to the City.
- c. In the event that this License is terminated by either party, the Licensee agrees to peaceably and promptly surrender the Premises on that date that is no more than six (6) month after the written notice of termination, to remove all trade fixtures and personal property that the Licensee has placed on the Premises, and, if requested by the City, to restore the Premises to its original state at the time of Licensee's entry thereon; however, in no event shall the City require or have the right to compel the Licensee to relocate the bus stop or fire hydrant to their original locations or to remove the ADA compliant sidewalk constructed in accordance with this License Agreement.

5. **NO INTEREST CREATED.** The Licensee agrees that no property or real estate interest of any kind is conveyed by virtue of this License or by the Licensee's occupancy or use of the Premises under this License Agreement, except as set forth herein.

6. **NO ASSIGNMENT OR SUB-LICENSE.** The Licensee shall not assign this License or make any sub-license under this License Agreement.

7. **INSURANCE.** Subject to the New Mexico Tort Claims Act, the State has coverage for losses and suits as set forth in its State of New Mexico Liability Certificate of Coverage and its State of New Mexico Property Certificate of Coverage, copies of which have been provided to City and which are acceptable to City. The State may obtain and maintain, at its sole expense, including, without limitation, the following:

obtains such a policy or policies of insurance, it is identify the City as an additional insured.

8. **NEW MEXICO TORT CLAIMS ACT.** Any liability incurred by the City and/or the Licensee in connection with this License Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et.seq., as amended. The City, the State and DCA, and their “public employees” as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense, and do not waive any limitation of liability pursuant to law. No provision of this License Agreement modifies or waives any provision of the New Mexico Tort Claims Act.
9. **RECORDING.** This License Agreement shall be recorded in the office of the Santa Fe County Clerk in its entirety.
10. **OBLIGATIONS OF LICENSEE.** The Licensee shall comply with the following conditions:
 - a. This License is subject to the provisions of the Santa Fe City Code Sections 14-8.4 (Landscape and Site Design), 23-2 (Construction and Maintenance of Curbs, Gutters, and Sidewalks), and other applicable City code requirements.
 - b. The approval of this License does not constitute the issuance of a building permit.
 - c. The Licensee shall keep the Premises clean and maintained.
 - d. The Licensee’s right to use the Premises is subject to any and all existing easements, including utility easements, and the rights incident thereto.

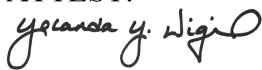
APPROVED THIS 10 DAY OF Nov., 2020.

CITY OF SANTA FE, A MUNICIPAL
CORPORATION



ALAN WEBBER
MAYOR

ATTEST:



YOLANDA Y. VIGIL, CITY CLERK



CITY ATTORNEY'S OFFICE:

Andrea Salazar

Andrea Salazar (Oct 20, 2020 15:32 MDT)

ASSISTANT CITY ATTORNEY

APPROVED:

Mary McCoy

MARY MCCOY, FINANCE DIRECTOR

BUSINESS UNIT/LINE ITEM

21117.460150

MUNIS 2122800

LICENSEE:

DEPARTMENT OF CULTURAL
AFFAIRS FOR THE STATE OF NM

By: Nick Schiavo

NICK SCHIAVO

Deputy Secretary

ACKNOWLEDGEMENT

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

Subscribed and sworn to, or affirmed under penalty of perjury, and acknowledged before me by Nick Schiavo, the Deputy Secretary of the New Mexico Department of Cultural Affairs, personally known to me or identified through satisfactory evidence, on this 24th day of September, 2020, after March 30, 2020 and for an indefinite period of time, pursuant to State of New Mexico Executive Order 2020-015, as amended by State of New Mexico Executive Order 2020-039, in which we engaged in direct interaction using audio-video technology. During such audio-video conference, Nick Schiavo signed this instrument while I observed him/her during the audio-video conference. Nick Schiavo transmitted to me this legible copy by fax or other electronic means, or caused it to be hand-delivered to me, on the same day it was signed.

Jane Elizabeth Egan
Notary Public

Printed Name: Jane Elizabeth Egan

My Commission Expires: November 25, 2023



OFFICIAL SEAL

JANE ELIZABETH EGAN

Notary Public - State of New Mexico

My Commission Expires: 11/25/2023



City of Santa Fe, New Mexico

Memorandum



DATE: October 1, 2020

TO: City of Santa Fe Governing Body

VIA: Jarel LaPan Hill, City Manager JLH
Regina Wheeler, Public Works Director RW
Erin McSherry, City Attorney EM
Andrea Salazar, Assistant City Attorney AS

FROM: Sam Burnett, Property Maintenance Manager

ITEM AND ISSUE:

Request for Approval on the License Agreement in exchange for obligations of Licensee for an indefinite term between the City of Santa Fe and New Mexico Department of Cultural Affairs.

BACKGROUND AND SUMMARY:

This agreement will grant a License to the New Mexico State Department of Cultural Affairs for the use of the right-of-way at the corner of Garfield Street and Guadalupe Street. The total area included in this license is 5,900 sqft.

This License allows the Licensee to use the Premises for the purpose of construction staging and storage during construction of the Vladem Contemporary Museum, and creating and maintaining landscaping and improvements for the Vladem Contemporary Museum. No other use by the Licensee of the right-of-way shall be allowed.

Both the City Attorney's Office and the General Counsel for the NM Department of Cultural Affairs have reviewed and negotiated the terms of the License with their internal stakeholders.

The Licensee's use of the Premises for any purpose not provided for herein shall be deemed a material and substantial breach of this Agreement and shall constitute grounds for injunctive relief by the City.

ACTION REQUESTED:

We respectfully requests your review and approval.



MICHELLE LUJAN GRISHAM
GOVERNOR

KEN ORTIZ
CABINET SECRETARY

MARK TYNDALL
DIRECTOR
RISK MANAGEMENT

State of New Mexico

General Services Department

ADMINISTRATIVE SERVICES DIVISION
(505) 476-1857

FACILITIES MANAGEMENT DIVISION
(505) 827-2141

PURCHASING DIVISION
(505) 827-0472

RISK MANAGEMENT DIVISION
(505) 827-2036

STATE PRINTING & GRAPHIC SERVICES BUREAU
(505) 476-1950

TRANSPORTATION SERVICES DIVISION
(505) 827-1958

STATE OF NEW MEXICO LIABILITY CERTIFICATE OF COVERAGE

Certificate of Coverage – Effective 07-01-2020

SECTION 1

I. PURPOSE AND NATURE OF THIS CERTIFICATE OF COVERAGE

This Certificate of Coverage must be construed in conformity with the corresponding Letter of Administration. This Certificate of Coverage does not provide insurance, but instead provides an explanation to the covered **Governmental Entities** and **Public Employees** of the State of New Mexico about the intent of the use of funds from the **Public Liability Fund**. This Certificate of Coverage shall be applied giving full effect to the intent of the **New Mexico Tort Claims Act**, NMSA § 41-4-1 et seq., as interpreted and determined in accordance with the Section V of this Certificate of Coverage. As the **Public Liability Fund** is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide separate counsel to a **covered party** in disputed coverage situations. Finally, failure to provide notice to a **covered party** of any covered dispute **shall not operate to waive any of the provisions of this Certificate of Coverage**.

II. COVERAGE DEFINED

- A. The **Public Liability Fund** will pay those sums for **ultimate net loss** that the **covered parties** become legally obligated to pay as damages because of the liabilities and waivers of immunity set forth in the **New Mexico Tort Claims Act**, caused by an **occurrence**, except as otherwise excluded under Section IV, below. The duty to defend under this Certificate of Coverage extends to liabilities and waivers of immunity expressly contained in the **New Mexico Tort Claims Act**. The duty to defend also extends to causes of action arising under the **New Mexico Fair Pay for Women Act**, **New Mexico Inspection of Public Records Act**, **New Mexico Whistleblower Protection Act**, and the **New Mexico Ethics Commission Act**. There is no general duty to defend other claims.
- B. The **Director**, acting on behalf of the General Services Department, Risk Management Division, through the **Public Liability Fund**, will have the right and the duty to defend the **covered party** against a claim or suit for damages covered under Section II, paragraph A, above. Such duty, however, shall cease upon final disposition of such claim or order issued by a court of competent jurisdiction.

III. COVERED PARTY

- A. **Governmental Entities** are **covered parties** under the Certificate of Coverage. Employees of covered **Governmental Entities**, acting within the scope of their duties, are **covered parties**. Other parties defined by NMSA Section 41-4-3 (F) as **Public Employees** of covered **Governmental Entities** are **covered parties**.
- B. Any other entity to which the General Services Department, Risk Management Division has issued a Certificate of Coverage is also a **covered party** under this Certificate of Coverage.
- C. Any **Public Employee** using an automobile owned or leased by a covered **Governmental Entity** or other Certificate of Coverage holder is also a **covered party** under this Certificate of Coverage.

IV. EXCLUSIONS

Without limiting the **Director's** power to make a written determination if this Certificate of Coverage applies to any claim. This Certificate of Coverage does not apply to:

A. **Procurement Violations/Bid Specifications/Cost Overruns**

- 1. Claims arising out of protests, estimates of probable costs or costs estimated being exceeded, faulty preparation of bid specifications, or plans, including architectural plans.
- 2. Mechanic's lien claims, stop notice claims, change order claims, or similar claims by contractors for the value of services or materials provided.

B. **Contractual Obligations**

Claims arising out of:

- 1. A failure to perform or breach of a contractual obligation; or
- 2. A failure to award a contract; or
- 3. A **covered party's** obligation to pay damages by reason of assumption of liability under contract or agreement. However, this exclusion does not apply to liability for damages the **covered party** would have in the absence of the contract or agreement.

C. **Employee Benefit Plans**

Benefits payable under any employee benefit plan.

D. **Fines, Penalties, and Punitive Damages**

Fines, sanctions, assessments, penalties, restitution, disgorgement, exemplary, or punitive damages. However, pursuant to Section 41-4-4 (C) of the **New Mexico Tort Claims Act**, this exclusion does not apply to exemplary or punitive damages awarded by a jurisdiction other than New Mexico against a Public Employee if such employee was acting within the scope of his employment.

Settlement agreements involving the **New Mexico Inspection of Public Records Act** require a **covered party's** contribution in an amount to be determined by the **Director**.

E. **Injunctive/Declaratory Relief**

Ultimate net loss arising out of relief or redress in any form other than money damages.

F. **Intentional Conduct**

Claims or damages caused by a **covered party's** expected or intentional conduct committed with malice, or willful or conscious disregard of New Mexico statutes or rights or safety of others. This exclusion does not apply to a **covered party** whose liability is based solely on its vicarious liability arising out of its relationship to one acting as described above.

G. **Abuse and Molestation**

Claims arising directly or indirectly, out of:

1. a **covered party's** actual or threatened abuse or molestation of any person while in the care, custody, or control of any **covered party**; or
2. the negligent employment, investigation, supervision, retention, or reporting to the proper authorities, or failure to so report, of a person for whom any **covered party** is or ever was legally responsible and whose conduct would be excluded by subparagraph G1., above.

H. **Land Use**

Claims arising out of or in connection with: land use regulation, land use planning, or the principles of eminent domain or condemnation proceedings.

I. **Pollution Cleanup**

Any loss, cost, or expense, including defense costs, arising out of any:

1. request, demand, or order that a **covered party** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or

2. claim or suit by or on behalf of a governmental authority for damages because of testing, monitoring, cleaning, removing, containing, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

J. Property of a Covered Party

Property damage to:

1. property owned by or in the care, custody, or control of the **covered party**;
2. property rented to or leased to the **covered party** where it has assumed liability for damage to or destruction of such property; or
3. aircraft, watercraft, or any **vehicle** in the **covered party's** care, custody, or control.

K. Animals

Any loss, cost or expense, including defense costs, arising out of any injury or property damage caused by an animal, insect, or plant.

L. Reasonable Accommodations

Any expenses or costs incurred by a **covered party** arising from providing a reasonable accommodation to a disabled person, including any modification to premises or workspace to comply with the Human Rights Act or the Americans with Disabilities Act.

M. Restitution from Officials or Employees

Claims by a **covered party** against its own past or present elected or appointed officials, employees, or volunteers, where such claim seeks damages or restitution payable to the **covered party**.

N. Workers' Compensation/Employer's Liability

Claims for bodily injury to employees arising out of and in the course of employment by the **covered party** that is covered by the **Workers' Compensation Fund** and/or the workers' compensation laws of the State of New Mexico, of any other state, of the federal laws of the United States, or any similar laws.

O. Wages and Salaries (Compensation Package)

Damage awards arising out of claims for past or future salary or wage loss, including multipliers, benefits, retirement, insurance or claims for attorney fees by any potential, present, or former employee or official of the **covered party**, arising out of, but not limited to, employment-related practices, policies, acts, or omissions, including termination, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person. This exclusion extends to claims of a spouse, child, parent, grandparent, brother, sister, or any other relative legally recognized in the State of New Mexico to have legal standing to

bring a cause of action, of that person as a consequence of injury to the person at whom any of the employment-related practices, policies, acts, or omissions described above are directed.

Settlement agreements incorporating damages as described above require a **covered party's** contribution in an amount to be determined by the **Director**.

V. CONDITIONS

A. Covered Party's Duties in the Event of an Occurrence

1. The **covered party** will notify the **Director** in writing as soon as practicable of an **occurrence** that is likely to result in a claim under this Certificate of Coverage. Such notice will include particulars sufficient to identify the **covered party** involved and, to the extent possible, information regarding the time, place, and circumstances of the **occurrence**, and the names and addresses of any witnesses.
2. The **covered party** shall provide to the **Director** written notice of any claim received by the **covered party** as soon as possible, but in no event more than (7) seven days from receipt.
3. The **covered party** shall cooperate with the **Director** and, upon request, assist in making settlement, in the conduct of suits, and in enforcing any right of contribution or indemnity against any person or organization who may be liable to **covered party**, and shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.

B. Right of the Director to Control Claim

1. The **Director** has the right to control the defense and settlement of a claim covered under this Certificate of Coverage. The **Director** shall have the right to select the attorney or attorneys representing each **covered party** and such attorney or attorneys shall be directed by, and report to, the **Director** with regard to the defenses, procedural decisions, and settlement of a claim.
2. The **Director** shall also have the right to determine if separate legal representation is needed where there is more than one **covered party** involved in a suit.
3. The **Director** shall have the exclusive right to settle a claim for which proceeds are to be paid out or are payable out of the **Public Liability Fund**.

C. Deductible

Pursuant to Risk Management Division rules and procedures, the **Director** may establish a deductible for each **Governmental Entity** that shall apply to each **occurrence** covered under Section II, above, by notifying the **Governmental Entity** in writing. However, in no event shall the deductible apply to an **occurrence** that commenced prior to the establishment of such deductible.

D. Other Coverage

The coverage provided by this Certificate of Coverage shall be excess over and not contributed with any insurance or other coverage that is available to the **covered party** whether such insurance or other coverage was purchased by the **covered party** or included such **covered party** as an additional insured or additional **covered party**. In the event of a liability claim arising out of a **Public Employee's** authorized use of a personal **vehicle**, used in the scope of that employee's duties, this certificate provides coverage in excess of the employee's personal liability coverage. The employee's personal liability policy is primary, including applicable personal insurance deductibles to be paid by the employee, and coverage is extended only in an amount to provide secondary coverage for the remaining financial exposure, if any, up to the **New Mexico Tort Claims Act** limit. This certificate does not reimburse an employee for their personal insurance deductibles.

E. Changes

Other than its annual issuance, the terms and conditions of this Certificate of Coverage shall not be altered or amended or waived, except by written notice signed by the **Director**. Such notice shall be provided at least (30) thirty days prior to the effective date of the change, in writing to the **Governmental Entities**.

F. Coverage Disputes

1. The **Director** shall make a written determination if this Certificate of Coverage applies to any disputed claim. The decision of the **Director** may only be appealed through arbitration. Such arbitration shall be requested by the **covered party** by written request to the **Director** within (30) thirty days of the postmark of the written determination of the **Director**.
2. If such arbitration is requested, the **covered party** and the **Director**, on behalf of the **Public Liability Fund**, shall, within (15) fifteen days from the date the written request is actually received in the office of the **Director**, select one arbitrator each and submit his or her name in writing to the other side. Within (10) ten days after their selections, the two arbitrators shall select a third independent arbitrator. If the two arbitrators cannot agree on the selection of the third arbitrator within those (10) ten days, either side may petition the First Judicial District Court in the county of Santa Fe for the appointment of the third arbitrator. The third arbitrator shall be an attorney and preside as the chairperson of the arbitration panel. No arbitrator shall be employed or affiliated with the **covered party** or the General Services Department, Risk Management Division.
3. The arbitration hearing shall commence within (45) forty-five days from the date of the selection of the chairperson, unless both sides agree to an extension. The **covered party** and the **Public Liability Fund** shall pay the cost of its own selected arbitrator and one-half of the cost of the third selected arbitrator. In addition, each side shall be responsible for its own cost and expense of arbitration.
4. The arbitration panel will endeavor to confine the length of the hearing to (2) two days. A decision of the arbitration panel shall be reported in writing. The written decision of the

arbitration panel shall be given to both sides within (30) thirty days of the close of the hearing.

5. During the course of the arbitration proceedings provided herein, the **Public Liability Fund** will be responsible for all fees and expenses for investigation, defense, or litigation of the claim or lawsuit in question. In the event the arbitration panel determines that coverage does not apply for such defense costs, the **covered party** shall reimburse the **Public Liability Fund** as directed by the arbitration panel.
6. All decisions of the arbitration panel shall be final and binding upon the parties and shall not be subject to any further appeal or court action.

G. **Public Liability Fund Protection**

Notwithstanding the duty of the **Director** to pay claims out of the **Public Liability Fund** under Section II above, the **Director** may withhold payment in any one fiscal year pursuant to Section 41-4-23 (D) of the **New Mexico Tort Claims Act**, if the **Director** believes that the **Public Liability Fund** would be exhausted by payment of all claims allowed during a fiscal year, and if so withheld, the **Director** shall notify all affected **covered parties** in writing as soon as practicable.

VI. **DEFINITIONS**

- A. The phrase “**covered party**” means those persons or entities stated in Section III, above.
- B. The phrase “**Governmental Entity**” or “**Governmental Entities**” means the state or any local public body as defined in Section 41-4-3 (B) of the **New Mexico Tort Claims Act** which has paid its allocated contribution to the Public Liability Fund.
- C. The term “**occurrence**” means an event, act, failure to act, or any other incident which results, or is likely to result, in a claim under this Certificate of Coverage.
- D. The term “**pollutant**” means any solid, liquid, gaseous, thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, airborne particles or fibers, molds, asbestos, lead, and waste. Waste includes material to be recycled, reconditioned, or reclaimed. The term **pollutant** as used herein does not mean potable water, agricultural water, water furnished to commercial users, or water used for fire suppression. The term **pollutant** also does not mean police use of mace, oleoresin capsicum (O.C.), pepper gas, or tear gas; or to weed abatement or tree spraying.
- E. The phrase “**Public Liability Fund**” means the fund created under Section 41-4-23 of the New Mexico Tort Claims Act.
- F. The term “**Director**” means the **Director** of the Risk Management Division of the General Services Department of the State of New Mexico.
- G. The phrase “**New Mexico Tort Claims Act**” means NMSA 1978, Section 41-4-1 et seq. (1976), as may be amended.

- H. The phrase “**ultimate net loss**” means the total of all defense costs, defense attorney’s fees, and all damages for which the **covered party** is liable arising out of an **occurrence** for which coverage under this Certificate of Coverage applies.
- I. The phrase “**Workers’ Compensation Fund**” means the fund established under the Risk Management Division statute, NMSA 1978, Section 15-7-6 (1977), as may be amended from time to time, to fund the liabilities for injuries to the employees of the State of New Mexico under the Workers’ Compensation laws of the State of New Mexico.
- J. The term “**vehicle**” means a land, water or air motorized **vehicle**, trailer or semi-trailer, including any machinery or apparatus attached thereto.

SECTION 2

COMMUNITY LAND GRANTS COVERAGE AND LIMITATIONS

I. COVERED COMMUNITY LAND GRANTS

- A. The General Services Department, Risk Management Division is authorized under Section 41-4-30 of the **New Mexico Tort Claims Act** to issue a Certificate of Coverage to community land grants that are governed as a political subdivision of the State of New Mexico pursuant to NMSA 1978, Chapter 49, Article 1.
- B. Coverage is contingent upon prompt payment by the community land grant of the community land grant’s assessment to the **Public Liability Fund** as determined by the **Director** of the Risk Management Division.

II. COVERED ACTIVITIES OF COMMUNITY LAND GRANTS

- A. Coverage is provided for the official activities of the covered community land grant, which are those activities explicitly authorized by the board of trustees of the community land grant for the governance and operation of the community land grant as a **Governmental Entity**, and that are the type of activities typically undertaken by the **Governmental Entities** in New Mexico, and that are not excluded by virtue of being business enterprise activities.
- B. Coverage is provided for the approved activities of the covered community land grant, which are those activities conducted at a community center that are approved through procedures established by the board of trustees of the community land grant, and that are not excluded by virtue of being business enterprise activities.

III. EXCLUSIONS

- A. Coverage for any community land grant does not include coverage for any enterprise or activities undertaken by any of the individual members of the community land grant, whether singly or in association with others.

- B. Coverage for any community land grant does not include coverage for any liability attributed to the business enterprise activities of a community land grant. Business enterprise activities include:
1. Any activity undertaken for purposes of earning a monetary profit for the community land grant or for any of its members. The term “monetary profit” as used herein does not include reasonable incidental charges or fees, such as may be made to recoup costs of furnishing meals or refreshments at official activities, or such as a reasonable fee for conducting an approved activity at the community center.
 2. Any activity involving the lease or sale of any property of the community land grant.
 3. Any activity organized to operate on a non-profit basis, which activity is typically operated on a for-profit basis when conducted by non-governmental entities, such as, but not limited to, the operation of a restaurant or inn, unless the **Director** upon application specifically gives prior approval of coverage for such activity, and only in accordance with such conditions as the **Director** may require.
 4. Any activity involving the provision, sale, or consumption of alcoholic beverages.
- C. Business enterprise activities are excluded from coverage regardless of whether they are authorized by the board of trustees of the community land grant, and regardless of whether they are undertaken by individual trustees, or by members, individually, as partnerships or as other types of associations, or in any corporate form.



MICHELLE LUJAN GRISHAM
GOVERNOR

KEN ORTIZ
CABINET SECRETARY

MARK TYNDALL
DIRECTOR
RISK MANAGEMENT

State of New Mexico

General Services Department

ADMINISTRATIVE SERVICES DIVISION
(505) 476-1857

FACILITIES MANAGEMENT DIVISION
(505) 827-2141

PURCHASING DIVISION
(505) 827-0472

RISK MANAGEMENT DIVISION
(505) 827-2036

STATE PRINTING & GRAPHIC SERVICES BUREAU
(505) 476-1950

TRANSPORTATION SERVICES DIVISION
(505) 827-1958

STATE OF NEW MEXICO PROPERTY CERTIFICATE OF COVERAGE

Certificate of Coverage – Effective 07-01-2020

SECTION 1

I. PURPOSE AND NATURE OF THIS CERTIFICATE

This Certificate of Coverage (“Certificate”) does not provide insurance, but instead provides an understanding among the **Governmental Entities** of the State of New Mexico about the intent of the use of funds from the **Public Property Reserve Fund** established under NMSA 1978, Section 13-5-1. The **Public Property Reserve Fund** is not an insurer but rather is a fund established by the legislature of the State of New Mexico to provide reimbursement for **loss** to public property, as defined by this Certificate, where not otherwise insured as provided by law.

II. PROPERTY COVERED

Except as otherwise excluded or limited herein, the **Public Property Reserve Fund** covers all property of an insurable nature, including money, securities, and **vehicles**, now existing or hereafter acquired, owned by the **Governmental Entity**, in the care, custody or control of the **Governmental Entity** for which the **Governmental Entity** is legally liable, or for which the **Governmental Entity** has assumed liability prior to **loss**, wherever situated, not otherwise excluded.

III. PERILS COVERED AGAINST

The **Public Property Reserve Fund** covers against all risks of direct physical **loss** or damage not otherwise excluded occurring during the period of this Certificate to covered property, including the expense of removal of debris of covered property damaged by a covered peril.

IV. COVERAGE LIMITS AND DEDUCTIBLES

A. Subject to specific exclusions, modifications, and conditions hereinafter provided, the liability of the **Public Property Reserve Fund** in any one **loss** regardless of whether one or more of the coverages of this Certificate are involved and regardless of the number of certificates issued to **Governmental Entities** shall not exceed the Limit of Liability stated on declarations for each occurrence regardless of the number of **Governmental Entities** and/or coverages involved.

- B. **The Risk Management Division Director** may establish a deductible for each **Governmental Entity** that shall apply to any one **loss** by notifying the **Governmental Entity** in writing. However, in no event shall the deductible apply to occurrences that commenced prior to the establishment of such deductible.
- C. Notwithstanding the duty of the General Services Department, Risk Management Division (“GSD/RMD”), through the **Public Property Reserve Fund**, to pay claims under this Certificate, the General Services Department may withhold payment in any one fiscal year upon a belief by the **Risk Management Division Director** that the **Public Property Reserve Fund** would be exhausted by payment of all claims allowed during that fiscal year.

V. EXTENSIONS OF COVERAGE

A. PROPERTY IN COURSE OF CONSTRUCTION

1. In regards to course of construction of a new building or of a new construction project not previously covered by existing property coverage, the Certificate will provide automatic property coverage for the **Governmental Entity** subject to the following conditions:
 - a. Project involves only real property on existing locations (excluding dams, piers, roads, tunnels, and bridges); and
 - b. Value of the project at the location does not exceed an amount stated on the declarations. Projects that exceed this amount may be covered by the endorsement.
2. In regards to course of construction to, and remodeling of, existing and currently covered projects, this Certificate will provide automatic coverage for the **Governmental Entity** subject to the following conditions:
 - a. Project involves only real property on existing locations (excluding dams, piers, roads, tunnels, and bridges); and
 - b. Value of the project at the location does not exceed an amount stated on the declarations. Projects that exceed this amount may be covered by the endorsement.
3. Prior written notification must be delivered to the **Risk Management Division Director** identifying the project by name and specific location, the total project cost, and the anticipated date of completion.
4. Coverage under “Property in Course of Construction” is not considered builders risk coverage and does not indemnify any private sector contractor, entity, business, person, or organization. Thus, if any construction contract that contains a provision whereby a **Governmental Entity** agrees to indemnify or provide a contractor with builder’s risk insurance coverage it does not modify the Certificate of Coverage.

B. OFF PREMISES SERVICES – Utilities

The coverage provided by the **Public Property Reserve Fund** is extended to include physical damage, business interruption **loss** and/or extra expense incurred and/or sustained by the **Governmental Entity** as a result of damage to, or destruction of, covered property damaged by a covered peril affecting any suppliers furnishing heat, light, power, gas, water, telephone or similar services to a **Governmental Entity’s** premises. This coverage is limited to the liability limits stated on the declarations.

C. EXPEDITING EXPENSES

In the event of physical **loss** or damage covered hereunder, the coverage under this Certificate includes the reasonable extra cost of temporary repair and of the expediting the repair of such damaged property of the **Governmental Entity**, including overtime and the extra cost of express or other rapid means of transportation. This extension does not reimburse for administrative overhead or project costs. This coverage is subject to a sublimit per the Declarations.

D. DEBRIS REMOVAL

This Certificate also covers expenses incurred in the removal of debris of the covered property from the premises of the **Governmental Entity** that may be destroyed or damaged by a covered peril(s). This debris removal coverage does not apply to the cost to extract pollutants from land or water, or to remove, restore, or replace polluted land or water. *Note: Tree removal is subject to a \$5000.00 per occurrence limit.*

E. DEMOLITION COST

In the event of physical damage to covered property by a covered peril, this Certificate is extended to cover the cost of demolishing any undamaged portion of the covered property, including the cost of clearing the site thereof, caused by **loss** from any covered peril(s) under this Certificate, and resulting from enforcement of any local or state ordinance or law regulating the construction, repair, or demolition of buildings or structures, and in force at the time of **loss** which necessitates such demolition.

F. INCREASED COST OF CONSTRUCTION – Building Laws/Code Requirements

In the event of physical damage to covered property by a covered peril, this Certificate is extended to cover the increased cost of repair or replacement occasioned by the enforcement of any state or local ordinance or law regulating the construction, repair, or demolition of real property, which is in force at the time such a **loss** occurs or which comes into force within (12) twelve months after such a **loss** occurs, which necessitates in repairing or replacing the building covered hereunder which has suffered damage or destruction by the covered peril(s), or which has undergone demolition, limited, however, to the minimum requirements of such ordinance or law. The maximum amount of additional **loss** covered by this Certificate which results from the above referenced (12) twelve month period is not to exceed 20% of the amount of the physical damage **loss** from which this additional **loss** results.

G. ANIMALS

This coverage is extended to cover police dogs, horses, other specially trained animals, livestock, or research animals maintained in the normal course of business of the **Governmental Entity** subject to perils, exclusions, and valuation sections herein. Coverage includes re-training expenses.

H. TRANSIT

This Certificate is extended to cover personal property of the **Governmental Entity** or property held by the **Governmental Entity** in trust while in due course of transit transferred by a licensed, bonded company specializing in transporting valuable goods, worldwide or a non-combat related military transport, against all risks of direct physical **loss** or damage not excluded by this Certificate to covered property occurring during the term of this Certificate.

I. VEHICLES

1. Governmental Entity Vehicles

This Certificate is extended to cover **vehicles** (included rented autos) of the **Governmental Entity** against physical **loss** or damage by a covered peril during the term of this Certificate subject to the applicable deductible per occurrence.

2. Employee Vehicles

This Certificate is extended to cover **vehicles** owned and operated by an employee acting within the scope of their duties for an occurrence to be paid by the **Governmental Entity**. As a condition that must be satisfied prior to extending coverage, the **Governmental Entity** must certify in writing that the employee was acting within the scope of their duties and that the claim was first tendered to the employee's personal **vehicle** insurance carrier. Only upon certification by the **Governmental Entity** can they submit an Employee **Vehicle Loss** claim. Coverage is extended but is reduced in an amount commensurate with the degree of negligence attributable to the employee as determined by the **Risk Management Division Director**. The claim will be subject to the applicable deductible per occurrence to be paid by the **Governmental Entity**.

J. EMPLOYEE PROPERTY

1. Property of Others Owned by Public Employees / Volunteers

This Certificate is extended to cover personal **Property of Others** owned by a public employee acting within the scope of their duties that enhances their job performance, subject to the applicable deductible per occurrence to be paid by the **Governmental Entity**.

K. MITIGATION

In the event of physical damage of covered property as a result of the lack of maintenance, this certificate is extended to mitigate those items shown to have caused the ensuing loss to the structure owned by the **Government Entity**. This coverage shall only apply when conditions necessitate the immediate repair to roofs, windows, etc. to prevent future losses. Mitigation expenses covered by this extension will be subject to a \$20,000.00 annual aggregate limit as approved by the Risk Management Advisory Board.

VI. PROPERTY EXCLUDED

This Certificate does not provide coverage for any of the following:

- A. Property not identified in the RMD Annual Exposure Survey;
- B. Standing timber, bodies of water, growing crops (not including experimental crops maintained in the normal course of business by a **Governmental Entity**);
- C. Land and land improvements such as athletic fields, golf courses (including land on which covered property is located), site prep, and land values (except building landscaping);
- D. Dams, tunnels, levies, paved/concrete surfaces, sidewalks, guard rails, cable/concrete barriers, bridges, swales, traffic signs/signals including electronic, markers, and curbing;
- E. Property in due course of ocean marine transit;
- F. Mail or other parcels after delivery to the custody of the United States Post Office, or other commercial mail or parcel carriers;
- G. Valuable papers, data, electronic records, subscriptions, software, electronic funds, and wire transfers;
- H. Offshore property, oil rigs, underground mines, caverns, and their contents;
- I. Road, street equipment and/or attached apparatus owned, rented or controlled by the **Governmental Entity** or any other types of heavy mobile equipment used for road or other types of construction;
- J. A **Governmental Entity's** personal property located outside the United States, unless the **Governmental Entity** has, prior to the **loss**, advised the Risk Management Division that such property will be located outside the United States;
- K. Personal property of students, and non-employees occupying or storing property in **Governmental Entity** buildings or vehicles.
- L. Fine Arts (Risk Management Division purchases a standalone policy with separate terms and conditions).

VII. PERILS EXCLUDED

This Certificate does not provide coverage for:

- A. **Loss** or damage caused by, or resulting from, lack of maintenance, moths, vermin, termites or other insects, domestic animals or livestock, subterranean water intrusion, inherent vice, latent defect, faulty materials, error in design, faulty workmanship, wear, tear or gradual deterioration, contamination, pollution, pathogen, rust, corrosion, wet or dry rot, mold, spores and fungus unless physical **loss** or damage not otherwise excluded herein ensues, and then only for such ensuing **loss**;
- B. Physical **losses** or damage by normal settling, shrinkage, or expansion in building or foundation;

- C. Delay or **loss** of markets (this exclusion shall be inapplicable to the extent inconsistent with any time element coverage provided elsewhere herein);
- D. **Loss** or damage to real or personal property caused by, or resulting from, misappropriation, conversion, inventory shortage, unexplained disappearance, theft/infidelity or any dishonest act on the part of the **Governmental Entity**, its employees, agents, or others to whom the property may be entrusted (bailees and carriers for hire excepted) or other party of interest;
- E. **Loss** or damage to real or personal property resulting from shrinkage, evaporation, **loss** of weight, leakage, breakage of fragile articles, marring, scratching, exposure to light, or change in color, texture or flavor unless such **loss** is caused directly by fire or the combating thereof, lightning, windstorm, hail, explosion, strike, riot or civil commotion, aircraft, **vehicles**, breakage of pipes or apparatus, sprinkler leakage, vandalism and malicious mischief, theft, attempted theft;
- F. **Loss** or shortage disclosed upon taking inventory or mysterious disappearance of property (except property in the custody of carriers or bailees for hire);
- G. **Loss** or damage caused by rain, sleet, or snow to personal property in the open (except in the custody of carriers or bailees for hire);
- H. **Loss** caused directly, or indirectly, by:
 - 1. Hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending or expected attack by:
 - a. any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval, or air forces; or
 - b. military, naval or air forces; or
 - c. an agent of any such government, power, authority, or forces;
 - 2. any weapon of war employing atomic fission or radioactive force whether in time of peace or war; or insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority or hindering, combating or defending against such an occurrence, seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.
- I. **Loss** by nuclear reaction, nuclear radiation, or radioactive contamination, all whether controlled or uncontrolled, and whether such **loss** be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the covered peril(s) in this Certificate; however, subject to the foregoing and all provisions of this Certificate, direct **loss** by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is covered by this Certificate;
- J. Failure of borrowers or renters of books, library materials, or other **valuable papers and records** to return them to the **Governmental Entity**;

- K. In regards to course of construction to already existing and covered property, the following exclusions shall apply:
1. The cost of making goods, faulty or defective workmanship, material, construction or design, but this exclusion shall not apply to damage by a peril not excluded resulting from such faulty or defective workmanship, material, construction or design;
 2. The cost of non-compliance of, or delay in, completion of contract;
 3. The cost of non-compliance with contract conditions; and
 4. Equipment or tools not owned by a **Governmental Entity** and not a part, or destined to become a part, of the installation.
- L. The following additional exclusions apply to **loss** or damage to animals covered under this Certificate:
1. Death of any animal(s) from natural causes;
 2. Death of any animal(s) that dies from an unknown cause, unless:
 - a. upon the death of such an animal a post-mortem examination is made of such animal by a licensed veterinarian, and
 - b. the veterinarian's post-mortem report shows the cause of death to clearly fall within the coverages afforded by this Certificate.
 3. Death of any animal(s) as a result of surgical operation, including inoculation, unless the necessity for such arises from an event covered by this Certificate; or
 4. The death or destruction of any animal(s) caused by, resulting from, or made necessary by physical injury caused by, or resulting from, the activities of the injured animal or other animals unless such death or destruction is the result of an event otherwise covered by this Certificate.
- M. The death of any animal(s) caused directly or indirectly by the neglect or abuse of the **Governmental Entity**, its agents, employees, or bailees (carriers for hire accepted) unless such **loss** is a result of an event otherwise covered by this Certificate;
- N. The **loss** by death of any animal(s) as a result of parturition or abortion;
- O. **Loss** resulting from depreciation in value caused by any animal(s) covered hereunder becoming unfit for or incapable of filling the function or duties for which it is kept, employed or intended, unless such **loss** is the result of an event otherwise covered by this Certificate;
- P. **Loss** by destruction of any animal(s) on the order of the federal or any state government, or otherwise as a result of having contracted or been exposed to any contagious or communicable disease;

- Q. The removal or disposal of the remains of any animal(s) or the expense thereof, unless such **loss** is the result of an event otherwise covered by this Certificate except this exclusion does not apply to the safe disposal of those animals infected with highly communicable disease;
- R. The **loss** of any animal(s) that has been unnerved (the term “unnerved” to be considered as meaning the operation of neurotomy for lameness);
- S. Any claim consequent upon delay, deterioration, or **loss** of use or **loss** of market arising from an event covered by this Certificate; or
- T. Cosmetic damage to real property caused by wind/hail resulting in marring or pitting of the exterior surface affecting the appearance but not the functionality or integrity of the materials.

VIII. VALUATION

- A. In case of **loss** to property of a **Governmental Entity** covered hereunder, the basis of adjustment shall be as of the time and place of **loss** as follows, subject to applicable deductibles:
 - 1. On all real and personal property, including **Property of Others** in the care of or control of the **Governmental Entity**, at the replacement value (as defined below) at the time of the **loss** without deduction for depreciation. If property is not replaced, or construction procurement begun, within (12) twelve months, then the actual cash value shall apply. No payment shall be provided if the **Governmental Entity** has no intention of replacement or repair of the damaged property or if repairs have not commenced within 18 months from the date of loss.
 - 2. On **improvements and betterments** at the replacement value at the time of **loss** without deduction for depreciation. If property is not repaired or replaced, or construction procurement begun, within (12) twelve months, then the actual cash value shall apply.
 - 3. On antique, restored or historical buildings, the cost of acquisition, relocation to the site and renovation or reconstruction. If property is not replaced, or construction procurement begun, within (24) twenty-four months, then the actual cash value shall apply. In the event of a partial **loss**, normal replacement cost coverage, as set forth in Section 1. Article VIII, Paragraph A (1) above, would apply.
 - 4. On **Property of Others** for which the **Governmental Entity** is liable under a lease agreement. The **Public Property Reserve Fund's** liability on the event of **loss** is limited to the **Governmental Entity's** obligation as defined in said lease agreement, but not to exceed the replacement cost.
 - 5. In regards to covered **vehicles**, and/or mobile equipment/unlicensed **vehicles** on or off premises, the **Public Property Reserve Fund** shall not be liable for more than the actual cash value of the property at the time any **loss** or damage occurs, and the **loss** or damage shall be ascertained or estimated according to such actual cash value as determined utilizing NADA clean retail value as a base price minus 10% for salvage, if vehicle is

retained. However, in no event shall the **loss** exceed what it would then cost to repair or replace, whichever is less, with materials of like, kind and quality, nor the amount for which the **Governmental Entity** may be liable. No payment will be provided if **Governmental Entity** has no intention of replacement or repair of damaged **vehicles**.

6. Unmanned Aerial System (Drones): In regards to covered **unmanned aerial systems** and attached apparatus the **Public Property Reserve Fund** shall not be liable for more than the actual cash value of the property at the time any **loss** or damage occurs, and the **loss** or damage shall be ascertained or estimated according to such actual cash value as determined by an independent appraiser as selected by Risk Management **Director**.
 7. Animals: replacement cost with like kind.
 8. Landscape: the actual replacement cost of sod, trees, shrubs, and plants; however, the **Public Property Reserve Fund's** liability for replacement of plants and shrubs will be limited to the actual size of the destroyed tree, plant or shrub at the time of **loss**, up to maximum size of 15 gallons per item. The term "landscape" does not include golf course greens, fairways, and bunkers.
- B. Wherever the term "actual cash value" is used in regards to real property or **improvements and betterments** in this clause, or else where herein, it shall mean replacement value less depreciation;
- C. "Replacement cost" shall mean the cost of repairing, replacing, constructing, or reconstructing (whichever is the least) the property at the time of **loss** on the same site, using new materials of like kind and quality and for like occupancy without the deduction for depreciation, subject to the following:
1. Until the property is actually repaired, replaced or reconstructed, the maximum amount recoverable shall be the actual cash value of the lost or damaged property;
 2. Replacement shall be effected by the **Governmental Entity** with due diligence and dispatch; and
 3. Replacement need not be on same site or of same or similar construction or occupancy provided that the **Public Property Reserve Fund** shall not be liable for any additional costs that are directly attributable to the inclusion of this provision.
- D. In the event that the **Governmental Entity** should fail to comply with any of the foregoing provisions, settlement shall be made at actual cash value.

IX. PAYMENTS TO LOSS PAYEE

It is agreed that if a **loss** payee is added to this Certificate, if ever, then in the event of a covered **loss** hereunder the **Public Property Reserve Fund** will, at the request of such **loss** payee, pay the covered **loss** to the **loss** payee to the extent of its interest in the covered **loss**.

X. DUTIES OF THE GOVERNMENTAL ENTITY AFTER A LOSS

In case of **loss**, the **Governmental Entity** shall:

- A. give *immediate* notice after the **loss** to the GSD/RMD via electronic notice. Notification over 30 days after the date of loss is subject to denial. Additional property (in the event of a multiple loss) including both real property and vehicles is to be submitted within 15 days of the initial report date. Additional property submitted after 15 days will be rejected and a new claim will be set up subject to the applicable deductible.
- B. protect the covered property from further damage, make reasonable temporary repairs required to protect the covered property, and keep an accurate record of repair expenditures for reimbursement;
- C. prepare an inventory of damaged personal property showing in detail, quantity, description, replacement value, and amount of **loss** and attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory. A lightning affidavit is required for the peril of lightning.
- D. provide administrative oversight and project management as needed;
- E. retain and exhibit the remains of the damaged property as often as may be reasonably required by the fund and submit to examination under oath;
- F. submit to the fund within (60) sixty days after requested a signed, sworn statement of **loss** that sets forth to the best of the **Governmental Entity's** knowledge and belief:
 - 1. the time and cause of **loss**;
 - 2. interest of the **Governmental Entity** and all others in the property involved and all encumbrances on the property;
 - 3. other policies of insurance that may cover the **loss**;
 - 4. changes in title or occupancy of the property during the term of the Certificate;
 - 5. specifications of any damage to the building or other covered property and detail estimates/invoices for repair of the damage; and
 - 6. an inventory of damaged personal property described in Section 1, Article X, Paragraph C, above.
- G. give immediate notice of such **loss** to the proper police authority if the **loss** is due to a violation of law;
- H. provide **loss** details and documentation that validates the cause of **loss**; and

- I. provide complete vendor information as requested by RMD to include name, address, and current substitute W-9 with all final invoice(s) submitted for payment.

XI. COVERAGE DISPUTE

- A. The **Risk Management Division Director** shall make a determination if this Certificate applies to a disputed claim. The decision of the **Risk Management Division Director** may only be appealed through arbitration. Such arbitration shall be requested by the **Governmental Entity** written request to the **Risk Management Division Director** within (30) thirty days of receipt of the written decision of the **Risk Management Director**.
- B. If such arbitration is requested, the **Governmental Entity** and the **Risk Management Division Director**, on behalf of the **Public Property Reserve Fund**, shall, within (15) fifteen days, select one arbitrator and submit his or her name in writing to the other side. Within (10) ten days after their selection, these two arbitrators shall select a third independent arbitrator. If the two sides cannot agree on the selection of the third arbitrator within (10) ten days, either side may petition the First Judicial District Court in the county of Santa Fe for the appointment of the third arbitrator. The third arbitrator shall be an attorney and preside as the chairperson of the arbitration panel. No arbitrator shall be employed by or affiliated with the **Governmental Entity** or the GSD/RMD.
- C. The arbitration hearing shall commence within (45) forty-five days from the date of the selection of the chairperson, unless both sides agree to an extension. The **Governmental Entity** and the **Public Property Reserve Fund** shall pay the cost of its selected arbitrator and one-half of the cost of the third selected arbitrator. In addition, each side shall be responsible for its own cost and expense of arbitration.
- D. The panel will endeavor to confine the length of the hearing in (2) two days. A decision of the panel shall be reported in writing. The written decision of the panel shall be given to both sides within (30) thirty days of the closing of the hearing.
- E. All decisions of the arbitration panel shall be final and binding upon the parties and shall not be subject to any further appeal or court action.

XII. VALUATION DISPUTE

- A. In case the **Governmental Entity** and the **Risk Management Division Director** shall fail to agree as to the amount of **loss**, then, on the written demand of either, each shall select a competent and neutral appraiser and notify the other of the appraiser selected. The appraisers shall proffer their reports to Risk Management Advisory Board for consideration and final determination, which shall be made by at least a majority of the Board.

XIII. OTHER COVERAGES

To the extent there is other coverage available, coverage under this Certificate will not contribute with any other coverage collectible by the **Governmental Entity** or **loss** payee. Coverage under

this Certificate shall be excess of such other coverage and the limits of liability under this Certificate shall be reduced to the extent other coverage is collectible.

XIV. SUBROGATION

- A. In the event of any payment under this Certificate, the **Public Property Reserve Fund** shall be subrogated to all the **Governmental Entity's** or **loss** payee's rights of recovery against any person or organization and the **Governmental Entity** or **loss** payee shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Governmental Entity** or **loss** payee shall assist and V.do nothing after **loss** to prejudice such rights.
- B. The **Public Property Reserve Fund** shall not be bound to pay any **loss** if the **Governmental Entity** or **loss** payee has impaired any right of recovery of **loss**; however, it is agreed that the **Governmental Entity** may, as respects **Governmental Entity's** personal property in transit, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.
- C. RMD shall retain all recovery rights and proceeds including deductibles, if applicable.

XV. OTHER CONDITIONS

A. PROTECTION AND PRESERVATION OF PROPERTY

In case of actual or imminent physical **loss** or damage of the type covered against this Certificate, the reasonable expenses incurred by the **Governmental Entity** in taking reasonable and necessary actions for the temporary protection and preservation of property covered hereunder shall be added to the total physical **loss** or damage otherwise recoverable under the Certificate and be subject to the applicable deductible and without increase in the limit provisions contained in the Certificate.

B. BREACH OF CONDITIONS

If any breach of a clause, condition, or warranty of this Certificate shall occur prior to a **loss** affected thereby under this Certificate, such breach shall not void the coverage nor avail the **Governmental Entity** to avoid liability unless such breach shall exist at the time of such **loss** under this Certificate, and be a contributing factor to the **loss** for which claim is presented hereunder, it being understood that such breach of clause or condition is applicable only to the property affected thereby. Notwithstanding the foregoing, if the **Governmental Entity** establishes that the breach, whether contributory or not, occurred without its knowledge or permission or beyond its control, such breach shall not prevent the **Governmental Entity** from recovering under this Certificate.

C. PERMITS AND PRIVILEGES

- 1. Anything in the conditions of this Certificate to the contrary notwithstanding, permission is hereby granted:

- a. to make additions, alterations, extensions, improvements and repairs, to delete or demolish, construct and reconstruct, and also to include all materials, equipment and supplies incidental to the foregoing operations of the property covered hereunder, while in, on and/or about the premises or adjacent thereto;
- b. for such use of the premises as usual and/or incidental to the business as conducted therein, and to keep and use all articles and material usual and/or incidental to said business in such quantities as the exigencies of the business require; or
- c. to be or become vacant or unoccupied with limit of time.

2. Nor shall this coverage be prejudiced by:

- a. Any act or neglect of the owner of the building, if the **Governmental Entity** hereunder is not the owner, or of any occupant of the within described premises other than the **Governmental Entity**, when such act or neglect is not within the control of the **Governmental Entity**, named herein; or
- b. By failure of the **Governmental Entity** to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the **Governmental Entity** has no control

D. PROTECTIVE SAFEGUARDS

The **Governmental Entity** shall exercise due diligence in maintaining in complete working order all protective safeguard equipment and services.

E. ASSIGNMENT, TRANSFER OR MODIFICATION

Assignment, transfer or modification of this Certificate shall not be valid without prior written consent of the **Risk Management Division Director**.

F. SALVAGE

When, in connection with any **loss** hereunder, any salvage is received prior or subsequent to the payment of such **loss**, the **loss** shall be figured on the basis on which it would have been settled had the amount of salvage been known at the time the **loss** was originally determined. RMD shall retain 100% of salvage rights and recovery proceeds.

G. RIGHT TO REVIEW RECORDS FOLLOWING A CLAIM

The **Governmental Entity**, as often as may be reasonably required, shall submit, and so far as within their power, cause all other persons interested in the property or employees to submit to examination under oath by any person named by the GSD/RMD relative to any and all matters in connection with a claim, and produce for examination all books of account, bills invoiced and other vouchers, or certified copies thereof if originals be lost at such reasonable time and place as may be designated by the GSD/RMD or their representatives and shall permit extracts and copies thereof to be made.

XVI. DEFINITIONS

A. Loss

Each **loss** is defined as an incident or series of incidents not otherwise excluded by this Certificate and arising out of a single event or originating cause and includes all resultant or concomitant covered **losses**. When the term applies to **loss** or **losses** from earthquake shock, flood, hail and/or windstorm, the following provisions shall apply:

1. Windstorm/Hail

- a. Each **loss** by windstorm or hail shall constitute a single claim hereunder; provided, if more than one windstorm shall occur within any period of seventy-two (72) hours, such windstorm shall be deemed to be a single windstorm within the meaning thereof. The GSD/RMD may elect the moment from which each of the aforesaid periods of seventy-two (72) hour periods shall overlap.

2. Flood

- a. Each **loss** by flood shall constitute a single **loss** hereunder if any flood occurs within a period of the continued rising or overflow of any river(s) or stream(s) and the subsidence of same within the banks of such river(s) or stream(s) such flood shall be deemed to a single occurrence within the meaning of this Certificate.
- b. Flood shall mean a general condition of partial or complete inundation of normally dry land area from:
 - i. overflow of inland or tidal water,
 - ii. unusual and rapid accumulation or runoff of surface waters from any source.
- c. Flood shall also mean mudslide or mudflow, which is a river or flow of liquid mud caused by flooding as defined in Section 1, Article XVI, Paragraphs A (2) (b) (i) or (ii), above.

3. Earthquake Shock

- a. With respect to the peril of earthquake shock, any and all **losses** from this cause within a one hundred sixty-eight (168) hour period shall be deemed to be one **loss**. The GSD/RMD may elect the moment from which each of the aforesaid periods of one hundred sixty-eight (168) hours shall be deemed to have commenced but no two such one hundred sixty-eight (168) hour period shall overlap.
- b. The term earthquake shock is defined as: earth movement, meaning natural faulting of land masses, but not including subsidence, landslide, rock slide, earth rising, earth sinking, earth shifting or settling unless as direct result of such earth movement. The definition of earthquake shock does not include ensuing **loss** or damage not otherwise excluded. Further, "Earthquake Sprinkler Leakage" is covered outside of the "Earthquake Shock" definition and subject to the basic peril deductible.

- B. **Property of Others** means any property belonging to others for which a **Governmental Entity** has assumed care, custody, control or bailment.
- C. **Improvements and betterments** means additions or changes made by a **Governmental Entity**/lessee at their own expense to a building they are occupying that enhance the building's value.
- D. **Valuable papers and records** means written, printed, electronic or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages, and manuscripts, but does not mean money or securities.
1. "Money" means currency, coins, bank notes, bullion, traveler's checks, register checks and money orders held for sale to public. The term "Money" does not mean electronic funds.
 2. "Securities" means all negotiable and nonnegotiable instruments or contracts representing either money or other property, and includes revenue, food stamps and other stamps in current use, tokens, and tickets, but does not include money.
- E. **Vehicle** means a land, water, or air motorized **vehicle**, trailer or semi-trailer, including any machinery or apparatus attached thereto.
- F. **Governmental Entity** means a department, agency, or institution of higher learning of the State of New Mexico.
- G. **Risk Management Division Director** means the **Director** of the Risk Management Division, General Services Department of the State of New Mexico.
- H. **Public Property Reserve Fund** means the fund established pursuant to NMSA 1978, Section 13-5-1 as may be amended from time to time.

SECTION 2

COMBINED BUSINESS INTERRUPTION, EXTRA EXPENSE, AND TUITION FEES

- A. This Certificate is extended to cover against **loss** caused by the perils covered by this Certificate, resulting directly from:
1. Necessary interruption of the **Governmental Entity's** business and the consequent reduction in gross earnings, and **loss** of tuition, caused by damage to or destruction of real or personal property, except finished stock, at any covered location; or
 2. Necessary extra expense, as hereinafter defined, incurred by the **Governmental Entity** in order to continue as nearly as practicable the normal operation and normal gross earnings of the **Governmental Entity's** business following damage to or destruction of real or personal property.

B. In the event of a **loss**, the fund shall be liable for additional expenses which occur after 72 hours following the **loss**, including:

1. The actual **loss** sustained by the **Governmental Entity** resulting directly from such interruption of business, but not exceeding the reduction in gross earnings and tuition less charges and expenses which do not necessarily continue during the interruption of business (hereinafter referred to as “**loss of earnings**”), at any covered location; or
2. Such necessary extra expense incurred by the **Governmental Entity** for only such length of time (hereinafter referred to as the “period of restoration”) as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace such part of the property herein described as has been damaged or destroyed, commencing with the date of such damage or destruction.

C. Resumption of operations is:

1. Applicable to **loss of earnings and tuition**; if the **Governmental Entity** could reduce the **loss** by:
 - a. complete or partial resumption of operation at the location herein described, whether damaged or not, or elsewhere;
 - b. making use of merchandise or other property at the location described herein or elsewhere; or
 - c. making use of stock (raw, in process, or finished) at the location herein described or elsewhere, such reduction shall be taken into account in arriving at the amount of **loss** hereunder.
2. Applicable only to extra expense: as soon as practicable, the **Governmental Entity** shall resume normal operations of the business and shall dispense with such extra expense.

D. For the purpose of this coverage, “gross earnings” are defined as the sum of:

1. Total net sales value of production;
2. Total net sales of merchandise;
3. Total net value of permit and license fees; and
4. Other earnings derived from operations of the business, less the cost of:
 - a. Raw stock from which such production is derived,
 - b. Supplies consisting of materials consumed directly in the conversion of such raw stock into finished stock or in supplying the services sold by the **Governmental Entity**,
 - c. Merchandise sold, including packaging materials therefore, and
 - d. Services purchased from outsiders (not employees of the **Governmental Entity**) for resale which do not continue under contract.

5. Note:

- a. No other costs shall be deducted in determining gross earnings.
 - b. In determining gross earnings, due consideration shall be given to the experience of the business before the date of damage or destruction and the probable experience thereafter had no **loss** occurred.
- E. Extra expense: The term “extra expense”, wherever used in this coverage, is defined as the excess, if any, of the costs incurred during the period of restoration, chargeable to the operation of the **Governmental Entity’s** business, over and above the costs that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred. Any salvage value of property obtained for temporary use during the period of restoration, which remains after the resumption of normal operations, shall be taken into consideration in the adjustment of any **loss** hereunder. Administrative project costs are not considered extra expense.
- F. Tuition: For the purpose of this coverage, “tuition” is defined as that portion of “gross earnings” as defined in Section 2 (Business Interruption), Article IV “Gross earnings”, above, which is tuition, fees, and other earnings from students of the **Governmental Entity**. Any claim for reduction in gross earnings shall be reduced by the amount of any claim for **loss** of tuition based on the same damage or destruction of real or personal property, except for that portion of any claim for **loss** of tuition which relates to the extension of the length of time applicable to **loss** of tuition beyond the period of restoration applicable to gross earnings as provided in Section 2, Article III, Paragraph B of this coverage.
- G. Finished stock: The fund shall not be liable for any **loss** of earnings resulting from damage or destruction of finished stock nor for the time required to reproduce said finished stock; however, this Certificate covers such expense, in excess of normal, as would necessarily be incurred in replacing any finished stock used by the **Governmental Entity** to reduce **loss** of earnings under this Certificate.
- H. Extension of coverage interruption by civil authority, this Certificate is extended to include:
 - 1. The actual **loss** sustained by the **Governmental Entity**, resulting directly from **loss** of earnings as covered hereunder; or
 - 2. Necessary extra expense incurred by the **Governmental Entity** as covered hereunder, during the length of time, not exceeding (4) four consecutive weeks, when access to premises covered by this Certificate is specifically prohibited by order of civil authority:
 - a. As a direct result of damage to or destruction of adjacent property by perils covered against; or
 - b. As a direct result of a bomb threat to covered premises.
- I. Additional exclusions and limitations:
 - 1. Applicable to **loss** of earnings and tuition resulting from damage to or destruction of media for, or programming records pertaining to, electronic data processing or electronically controlled equipment, including data thereon, by the perils covered against: The length of time for which the **Public Property Reserve Fund** shall be liable hereunder is for the lesser of:

- a. thirty (30) consecutive calendar days; or
 - b. the length of time that would be required to rebuild, repair, replace or restore such property herein described as has been damaged or destroyed.
2. Applicable to **loss** of earnings and tuition, the **Public Property Reserve Fund** shall not be liable for any increase of **loss** resulting from the suspension, lapse, or cancellation of any lease, license, contract or order unless such suspension, lapse, or cancellation results directly from the interruption of business, and then the fund shall be liable for only such as affects the **Governmental Entity's** earnings during, and limited to, the period of indemnity covered under this Certificate.
 3. Applicable only to any extra expense, the **Public Property Reserve Fund** shall not be liable for the cost of repairing or replacing any of the real or personal property herein described, nor for the cost of research or other expense necessary to replace or restore damaged or destroyed records, including media for, or programming records pertaining to, electronic data processing or electronically controlled equipment, including data thereon, that have been damaged or destroyed by the covered perils, except cost in excess of normal cost of such repair, replacement, or restoration necessarily incurred for the purpose of reducing **loss** under this Certificate. In no event shall such excess cost exceed the amount by which the total extra expense **loss** otherwise payable under this Certificate so thereby reduced.
 4. The **Public Property Reserve Fund** shall not be liable for any increase of **loss** of earnings, tuition, nor for any extra expense resulting from interference at the described premises, by strikers or other persons, with rebuilding, repairing or replacing the property or with the resumption or continuation of business, nor shall the fund be liable for any other consequential or remote **loss**.

J. Definitions:

1. "Raw stock" means material in the state in which the **Governmental Entity** receives it for conversion by the **Governmental Entity** into finished stock.
 2. "Stock in process" means raw stock which has undergone any aging, seasoning, mechanical, or other process of manufacturing at the location herein described but which has not become finished stock.
 3. "Finished stock" means stock manufactured or processed by the **Governmental Entity** which in the ordinary course of the **Governmental Entity's** business is ready for packaging, shipment or sale.
 4. "Merchandise" means goods kept for sale by the **Governmental Entity** which are not the product of manufacturing operations conducted by the **Governmental Entity**.
 5. "Normal" means the condition that would have existed had no **loss** occurred.
- K. Requirements in case **loss** occurs: The **Governmental Entity** shall render to the **Risk Management Division Director** a proof of **loss**, signed and sworn to by an authorized official of the

Governmental Entity as soon as practicable after the **loss** becomes known, stating the knowledge and belief of the **Governmental Entity** as to the following:

1. The time and origin of the property damage or destruction causing the **loss** of earnings, **loss** of tuition, or extra expense;
 2. The interest of the **Governmental Entity** and of all others in the business;
 3. All other contracts of insurance, whether valid or not, covering in any manner the **loss** covered by this Certificate;
 4. Any change in the title, nature, location, encumbrance or possession of said business since the issuing of this Certificate; and
 5. By whom and for what purpose any building herein described and the several parts thereof were occupied at the time of damage or destruction, and shall furnish a copy of all the descriptions and schedules in all policies, the actual amount of business interruption value, and **loss** of earnings, **loss** of tuition, or extra expense claimed, accompanied by detail exhibits of all values, costs and estimates upon which such amounts are based.
- L. The **Governmental Entity**, as often as may be reasonably required, shall exhibit to any person designated by the **Risk Management Division Director** all that remains of any property herein described, and submit to examination under oath by any person named by the **Risk Management Division Director**, and subscribe the same; and, as often as may be required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals are lost, at such reasonable time and place as may be designated by the **Risk Management Division Director** or their representative, and shall permit extracts and copies thereof to be made.

ACTION SHEET PUBLIC WORKS AND UTILITES COMMITTEE MEETING OF 11/09/2020			
ISSUE NO. 8D Request for Approval on the License Agreement in exchange for obligations of Licensee for an indefinite term between the City of Santa Fe and New Mexico Department of Cultural Affairs. (Sam Burnett, Public Works Project Administrator, jsburnett@santafenm.gov , (505) 955-9533 and Andrea Salazar, Assistant City Attorney, asalazar@santafenm.gov , (505) 995-6303) <u>Committee Review:</u> Quality of Life Committee: 11/04/2020 Public Works & Utilities Committee: 11/09/2020 Governing Body: 11/10/2020			
PUBLIC WORKS AND UTILITES COMMITTEE ACTION: Approved on consent agenda to forward to 11/10/2020 Governing Body			
SPECIAL CONDITIONS OR AMENDMENTS:			
STAFF FOLLOW UP:			

VOTE:	FOR	AGAINST	ABSTAIN
COUNCILOR RIVERA, CHAIR	X		
COUNCILOR GARCIA	X		
COUNCILOR ABEYTA	X		
COUNCILOR LINDELL	X		
COUNCILOR VIGIL COPPLER	X		

<p style="text-align: center;">ACTION SHEET ITEM FROM QUALITY OF LIFE COMMITTEE MEETING OF 11/04/2020 FOR CITY COUNCIL MEETING OF 11/10/2020</p>

ISSUE:

Request for Approval on the License Agreement in exchange for obligations of Licensee for an indefinite term between the City of Santa Fe and New Mexico Department of Cultural Affairs. (Sam Burnett, Public Works Project Administrator, jsburnett@santafenm.gov, (505) 955-9533 and Andrea Salazar, Assistant City Attorney, asalazar@santafenm.gov, (505) 995-6303)

Committee Review:

Quality of Life Committee: 11/04/2020

Public Works & Utilities Committee: 11/09/2020

Governing Body: 11/10/2020

QUALITY OF LIFE COMMITTEE ACTION: Approved on discussion. Councilor Villarreal moved this item from the consent agenda to the discussion agenda.

SPECIAL CONDITIONS OR AMENDMENTS:

SEND TO:

Public Works and Utilities Committee; Governing Body

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON ROMERO-WIRTH	X		
COUNCILOR VILLARREAL	X		
COUNCILOR RIVERA	X		
COUNCILOR GARCIA	X		
COUNCILOR CASSUTT-SANCHEZ	X		

Signature: Geralyn Cardenas
Geralyn Cardenas (Dec 11, 2020 17:21 MST)

Email: gfcardenas@santafenm.gov









GB PWD 20-0640 NM DEPT OF CULTURAL

Final Audit Report

2020-12-13

Created:	2020-12-11
By:	YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAdqA7xLPmKv5ynI6Ev3dsFYUnLSQQhpja

"GB PWD 20-0640 NM DEPT OF CULTURAL" History

-  Document created by YODEL CATANACH (yocatanach@ci.santa-fe.nm.us)
2020-12-11 - 4:00:34 PM GMT- IP address: 63.232.20.2
-  Document emailed to Mary McCoy (mtmccoy@santafenm.gov) for signature
2020-12-11 - 4:06:40 PM GMT
-  Email viewed by Mary McCoy (mtmccoy@santafenm.gov)
2020-12-11 - 6:38:11 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Mary McCoy (mtmccoy@santafenm.gov)
Signature Date: 2020-12-11 - 6:56:14 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Geralyn Cardenas (gfcardenas@santafenm.gov) for signature
2020-12-11 - 6:56:18 PM GMT
-  Email viewed by Geralyn Cardenas (gfcardenas@santafenm.gov)
2020-12-11 - 10:43:07 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Geralyn Cardenas (gfcardenas@santafenm.gov)
Signature Date: 2020-12-12 - 0:21:05 AM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Alan Webber (amwebber@santafenm.gov) for signature
2020-12-12 - 0:21:09 AM GMT
-  Email viewed by Alan Webber (amwebber@santafenm.gov)
2020-12-12 - 0:34:19 AM GMT- IP address: 76.127.55.244
-  Email viewed by Alan Webber (amwebber@santafenm.gov)
2020-12-13 - 0:37:27 AM GMT- IP address: 76.127.55.244
-  Document e-signed by Alan Webber (amwebber@santafenm.gov)
Signature Date: 2020-12-13 - 0:38:11 AM GMT - Time Source: server- IP address: 76.127.55.244



Document emailed to Yolanda Vigil (yyvigil@santafenm.gov) for signature

2020-12-13 - 0:38:15 AM GMT



Email viewed by Yolanda Vigil (yyvigil@santafenm.gov)

2020-12-13 - 7:57:01 PM GMT- IP address: 104.47.64.254



Document e-signed by Yolanda Vigil (yyvigil@santafenm.gov)

Signature Date: 2020-12-13 - 7:58:52 PM GMT - Time Source: server- IP address: 63.232.20.2



Agreement completed.

2020-12-13 - 7:58:52 PM GMT