



# City of Santa Fe, New Mexico

## Memorandum



**DATE:** January 16, 2024

**TO:** Governing Body

**VIA:** Rich Brown, Community Development Director *Richard Brown* Jan 16, 2024  
 Regina Wheeler, Public Works Director *Regina Wheeler* Jan 16, 2024  
Regina Wheeler (Jan 16, 2024 17:39 MST)

**FROM:** Karen Iverson, Metropolitan Redevelopment Director *Karen Iverson* Jan 16, 2024  
Karen Iverson (Jan 16, 2024 14:48 MST)

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**ACTION(S):**

Request Approval of the of State of New Mexico Department of Finance and Administration Capital Appropriation Project Grant Agreement 21-F2903 in the Total Amount of \$1,000,000 to Plan, Design, Construct and Improve Infrastructure for the Midtown Santa Fe Property, Term Ending June 30, 2025. (Karen Iverson, MRA Director, kriverson@santafenm.gov).

Request Approval of a Budget Amendment Resolution (BAR) in the Amount of \$1,000,000 to Allocate Proceeds from the of State of New Mexico Department of Finance and Administration Capital Appropriation Project Grant Agreement 21-F2903 for Midtown Infrastructure Development to FY24 Capital Budget for the Midtown Redevelopment Project. (Karen Iverson, Metropolitan Redevelopment Director, kjiverson@santanm.gov).

**BACKGROUND AND SUMMARY:**

Since the adoption of Resolution 2022-12 Midtown Moving Forward and Resolution 2022-68 adopting the Midtown Master Plan, the City has been actively pursuing redevelopment of the Midtown Site. The City has entered into an Exclusive Negotiation Agreement with Midtown Art and Design Alliance for redevelopment of the Visual Arts Center, and with Midtown Santa Fe Productions (aka Aspect Studio) for the redevelopment of Garson Studios and further development of film facilities at Midtown.

The Metropolitan Redevelopment Agency has been formed, and the Director has been hired. The Agency is seeking members for the Metropolitan Redevelopment Commission to make recommendations to the Governing Body regarding redevelopment of the Midtown site. Negotiations with the State are ongoing for acquisition of Tract O within the master planned area. The Agency is planning activation of the site with the help of community partners.

The appropriation provides \$1,000,000 to plan, design, construct and improve infrastructure for the Midtown Santa Fe property. Infrastructure and land use planning including parcelization, Phase 1 Infrastructure scoping and stormwater planning are underway. This Appropriation will fund continued Midtown infrastructure investment for redevelopment.

Funds must be spent by June 30, 2025. The City received the 2021 capital appropriations agreements from DFA on December 29, 2023 after providing the state with an executed fiscal agent agreement. The appropriation for \$1,000,000 for Midtown Infrastructure was amongst the five agreements received.

**PROCUREMENT METHOD: N/A**

**FUNDING SOURCE: 2021 New Mexico State Capital Appropriation**

**Project Ledger ID:** MTC245250D

**Fund Name/Number:** Public Works/Fund 525

**Munis Org Name/Number:** Midtown Campus-Capital Projects/5250610 <sup>AH</sup>

**Munis Object Name/Number:** NM Department of Finance and Administration/490210

**ATTACHMENTS:**

NM 21-F2903 Grant Agreement

BAR

Project Ledger Request Form

Summary of Contracts

**STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
FUND 89200 CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into by the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **City of Santa Fe** hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

**RECITALS**

**WHEREAS**, in the Laws of 2021, Chapter 138, Section 29, Paragraph 344 the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

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

**WHEREAS**, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

**AGREEMENT**

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

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

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

**21-F2903      \$1,000,000.00      APPROPRIATION REVERSION DATE: 30-JUN-2025**  
Laws of 2021, Chapter 138, Section 29, Paragraph 344, One Million Dollars and Zero cents (\$1,000,000.00), to plan, design, construct and improve infrastructure for the midtown Santa Fe property in Santa Fe in Santa Fe county.

The Grantee's total reimbursements shall not exceed One Million Dollars and Zero cents (\$1,000,000.00) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")<sup>73</sup>, if applicable, Zero Dollars and Zero Cents (\$0.00), which equals One Million Dollars and Zero cents (\$1,000,000.00) (the "Adjusted Appropriation Amount").

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

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

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

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>74</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

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

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<sup>73</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

<sup>74</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
  - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
  - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

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

- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
  - a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
  - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
  - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

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

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

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

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

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

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Santa Fe  
Name: Alan Webber  
Title: Mayor  
Address: PO Box 909, Santa Fe, NM 87504-0909  
Email: [mayor@santafenm.gov](mailto:mayor@santafenm.gov)  
Telephone: 505-955-6590

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Santa Fe  
Name: John Blair  
Title: City Manager  
Address: PO Box 909, Santa Fe, NM 87504-0909  
Email: [jwblair@santafenm.gov](mailto:jwblair@santafenm.gov)  
Telephone: 505-955-6848

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division  
Name: Daniel Catanach  
Title: Project Manager  
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501  
Email: [DanielN.Catanach@aldfa.nm.gov](mailto:DanielN.Catanach@aldfa.nm.gov)  
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

#### **ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS**

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025**, the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

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

## **ARTICLE V. EARLY TERMINATION**

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

Early Termination includes:

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

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

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

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

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

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

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

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

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

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

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

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

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

## **ARTICLE VII. AMENDMENT**

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

## **ARTICLE VIII. REPORTS**

### **A. Database Reporting**

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.



Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

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

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

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

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

**C. Deadlines**

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

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

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

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

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
  - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
  - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
  - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
  - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.
  - (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
  - (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
  - (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
  - (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
  - (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
  - (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

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

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

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

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

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

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

#### **ARTICLE XIII. LIABILITY**

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

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

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

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

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

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Santa Fe** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Santa Fe's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Santa Fe** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **City of Santa Fe** or the Department"

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

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

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

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

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

A. Throughout the term of this Agreement, Grantee shall:

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

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

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

**ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES**

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF

staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

**GRANTEE**

  
Alan Webber (Feb 1, 2024 16:38 MST)

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

\_\_\_\_\_  
City of Santa Fe

\_\_\_\_\_  
Entity Name

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

Its: Mayor  
-----  
(Type or Print Title) Feb 1, 2024

\_\_\_\_\_  
Date


**DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION**

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

Its: Division Director

\_\_\_\_\_  
Date


CITY OF SANTA FE:

  
Alan Webber (Feb 1, 2024 16:38 MST)

ALAN WEBBER, MAYOR

DATE: Feb 1, 2024

ATTEST:


  
GERALYN CARDENAS (Feb 1, 2024 16:43 MST)

GERALYN CARDENAS, INTERIM CITY CLERK

GB MTG 01/31/2024


XIV

CITY ATTORNEY'S OFFICE:

  
Marcos Martinez (Jan 10, 2024 08:54 MST)

SENIOR ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

  
Emily K. Oster (Jan 18, 2024 07:08 MST)

EMILY OSTER, FINANCE DIRECTOR



**STATE OF NEW MEXICO  
CAPITAL GRANT PROJECT  
Request for Payment Form  
Exhibit 1**

**I. Grantee Information**

(Make sure information is complete & accurate)

- A. Grantee: \_\_\_\_\_  
 B. Address: \_\_\_\_\_  
 (Complete Mailing, including Suite, if applicable)  
 \_\_\_\_\_  
 City, State, Zip  
 C. Contact Name/Phone #: \_\_\_\_\_  
 D. Grant No: \_\_\_\_\_  
 E. Project Title: \_\_\_\_\_  
 F. Grant Expiration Date: \_\_\_\_\_

**II. Payment Computation**

- A. Payment Request No. \_\_\_\_\_  
 B. Grant Amount: \_\_\_\_\_  
 C. AIPP Amount (If Applicable): \_\_\_\_\_  
 D. Funds Requested to Date: \_\_\_\_\_  
 E. Amount Requested this Payment: \_\_\_\_\_  
 F. Reversion Amount (If Applicable): \_\_\_\_\_  
 G. Grant Balance: \_\_\_\_\_  
 H.  GF     GOB     STB (attach wire if first draw)  
 I.  Final Request for Payment (if Applicable)

**III. Fiscal Year :** \_\_\_\_\_

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

**IV. Reporting Certification:**  I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

**V. Compliance Certification:**  Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

\_\_\_\_\_  
**Grantee Fiscal Officer**  
 or **Fiscal Agent** (if applicable)

\_\_\_\_\_  
**Grantee Representative**

\_\_\_\_\_  
 Printed Name

\_\_\_\_\_  
 Printed Name

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

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

**(State Agency Use Only)**

Vendor Code: \_\_\_\_\_ Fund No.: \_\_\_\_\_ Loc No.: \_\_\_\_\_

I certify that the State Agency financial and vendor file information agree with the above submitted information.

\_\_\_\_\_  
 Division Fiscal Officer

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Division Project Manager

\_\_\_\_\_  
 Date

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE  
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee # \_\_\_\_\_

DATE: \_\_\_\_\_

TO: Department Representative: \_\_\_\_\_, \_\_\_\_\_

FROM: Grantee Entity: \_\_\_\_\_

Grantee Official Representative: \_\_\_\_\_

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: \_\_\_\_\_

Grant Termination Date: \_\_\_\_\_

As the designated representative of the Department for Grant Agreement number \_\_\_\_\_ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

Vendor or Contractor: \_\_\_\_\_

Third Party Obligation Amount: \_\_\_\_\_

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): \_\_\_\_\_

The Amount of this Notice of Obligation: \_\_\_\_\_

The Total Amount of all Previously Issued Notices of Obligation: \_\_\_\_\_

The Total Amount of all Notices of Obligation to Date: \_\_\_\_\_

*Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.*

Department Rep. Approver: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

Log # <i>{Finance use only}</i> :	
Journal # <i>{Finance use only}</i> :	

## City of Santa Fe, New Mexico BUDGET AMENDMENT RESOLUTION (BAR)

DEPARTMENT / DIVISION NAME Midtown Campus (MTC) /MTC CIP	DATE 1/2/2024
---	------------------

ITEM DESCRIPTION	ORG	OBJECT	PROJECT	INCREASE	DECREASE
<b>EXPENDITURES</b>				<i>{enter as positive #}</i>	<i>{enter as negative #}</i>
WIP CONTRUCTION - DFA MTC IMPROVEMENTS	5250610	572970	MTC245250D	1,000,000	

REVENUES	ORG	OBJECT	PROJECT	INCREASE	DECREASE
DFA - 21-F2901 MTC IMPROVEMENTS	5250610	490210	MTC245250D	(1,000,000)	

**JUSTIFICATION:** *(use additional page if needed)*  
 --Attach supporting documentation/memo

\$	-
\$	-

APPROPRIATION OF 2021 DFA GRANT FUNDING FOR MIDTOWN CAMPUS IMPROVEMENTS

<i>{Complete section below if BAR results in a net change to ANY Fund}</i>	
Fund(s) Affected	Fund Balance Increase/(Decrease)
<b>TOTAL:</b>	<b>0</b>

Halona Crowe	1/2/2024	<i>{Use this form for Finance Committee/ City Council agenda items ONLY}</i>	<i>Andy Hopkins</i> <small>Andy Hopkins (Jan 4, 2024 12:13 MST)</small>
Prepared By <i>{print name}</i>	Date	<b>CITY COUNCIL APPROVAL</b>	Budget Officer <span style="float: right;">Date</span>
Division Director Signature <i>{optional}</i>	Date	City Council Approval Date <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px;"></span>	Finance Director <i>{≤ \$5,000}</i> <span style="float: right;">Date</span>
<i>Regina Wheeler</i> <small>Regina Wheeler (Jan 4, 2024 11:52 MST)</small>	Date	Agenda Item #: <span style="border: 1px solid black; display: inline-block; width: 100px; height: 20px;"></span>	N/A City Manager <i>{≤ \$60,000}</i> <span style="float: right;">Date</span>
Department Director Signature	Date		



# City of Santa Fe New Mexico

## Finance Department

### Project Ledger Request Form



Date of Request: 01/02/2023

Project Title: Midtown Improvements - DFA

Project Type:  CIP  Grant  Internal Tracking

Department: Public Works/Midtown Project Manager: Regina Wheeler/Karen Iverson Ext: 505-690-4197 RW/6403 KI

Project Date Range: 01/01/2024 to 06/30/25

Create Fixed Asset

Project ID: <u>MTC245250D</u>
Grant ID: <u>S 2423</u>
Approved By: <u>CAJ 1/3/24</u>
Entered By: <u>CMT</u> (Finance Use Only)

Multi-Funding (complete all funding sources, should equal 100%)

Funding Source: NM DFA 21-F2903 % of Funding: 100%

MUNIS ORG: 5250610 MUNIS OBJ: 490210 Awarded Amount: \$1,000,000

Funding Source: \_\_\_\_\_ % of Funding: \_\_\_\_\_

MUNIS ORG: \_\_\_\_\_ MUNIS OBJ: \_\_\_\_\_ Awarded Amount: \_\_\_\_\_

#### Expense String Phase:

A project must have at least one phase identified, this can be used as an additional level of tracking, for example, CIP - Design, Construction, etc. For Grants can be used as reimbursable types, such as transportation, salaries.

(You can create more than one phase and you can default MUNIS ORGs and OBJs, optional)

Phase: Construction MUNIS ORG: 5250610 MUNIS OBJ: 572970

Phase: \_\_\_\_\_ MUNIS ORG: \_\_\_\_\_ MUNIS OBJ: \_\_\_\_\_

Phase: \_\_\_\_\_ MUNIS ORG: \_\_\_\_\_ MUNIS OBJ: \_\_\_\_\_

Contract number: \_\_\_\_\_ Comments/Other: UPDATE TO ADD FY24 ALLOC, EXP

#### **GRANTS ONLY:**

Grantor Name: 21-F2903 DFA ALLOCATION FY24 Awarded Amount: 1,000,000.00

AR Charge Code: 5250610.490210  Grant funds multiple projects  
(Complete a form for each project)

Grantor Id: DFA-700007 Federal CFDA (if applicable): \_\_\_\_\_

(If grants please provide all grant award documents with form)  Attached Grant Documentation



# City of Santa Fe

## Summary of Contract, Agreement, Amendment & Lease

All applicable fields to be completed by department (complete 1.b only if you are processing an amendment):

1.a Munis Contract: \_\_\_\_\_ Procurement # (RFP/ITB# If any): \_\_\_\_\_

Contractor: DFA Local Government

Procurement Method/Vehicle: Small Purchase  RFP  ITB  Sole Source  GSA  Cooperative  Exempt  SWPA/Existing

Description/Title: 2021 DFA GRANT FUNDING FOR MIDTOWN CAMPUS IMPROVEMENTS

Contract:  Agreement:  Lease/Rent:  Amendment:

Term Start Date: 1/31/2024 Term End Date: 06/30/2025 Total Contract Amount: \$1,000,000

Approved by Council (If over the City Manager's approval threshold, you must go through GB) 1/31/2024

Contract / Lease: 2021 DFA GRANT FUNDING FOR MIDTOWN CAMPUS IMPROVEMENTS

1.b Amendment #: \_\_\_\_\_ to the Original Contract/Lease # \_\_\_\_\_

Increase/(Decrease) Amount \$: \_\_\_\_\_

Extend Expiration Date to: \_\_\_\_\_

Approved by Council (If the original went through GB, all amendments must go through GB regardless of the amendment reason) Date: \_\_\_\_\_

Amendment is for: \_\_\_\_\_

### 2. HISTORY of Contract, Amendments & Lease / Rent - Please Elaborate (option: attach spreadsheet if multiple amendments)

State of New Mexico Department of Finance and Administration Capital Appropriation Project Grant Agreement 21-F2903 in the Total Amount of \$1,000,000 to Plan, Design, Construct and Improve Infrastructure for the Midtown Santa Fe Property, Term Ending June 30, 2025. Associated Budget Amendment Resolution (BAR) in the Amount of \$1,000,000 000 to Allocate Capital from the of State of New Mexico Department of Finance and Administration Capital Appropriation Project Grant Agreement 21-F2903 for Midtown Infrastructure Development

### 3. Procurement History: N/A

Johanna Louato Montano \_\_\_\_\_ Jan 17, 2024  
Purchasing Officer Review: \_\_\_\_\_ Date: \_\_\_\_\_

Comment & Exceptions: No procurement. Revenue

### 4. Funding Source: 2021 NM DFA State Capital Appropriation Org / Object: 5250610/490210

Andy Hopkins \_\_\_\_\_ Jan 17, 2024  
Andy.Hopkins (Jan 17, 2024 15:57 MST) \_\_\_\_\_ Date: \_\_\_\_\_

Budget Officer Approval: \_\_\_\_\_

Comment & Exceptions: \_\_\_\_\_

### 5. Grant History (if applicable): \_\_\_\_\_

Grants Administrator Approval: Cheryl James \_\_\_\_\_ Date Jan 17, 2024  
Cheryl.James (Jan 17, 2024 15:52 MST)

Staff Contact who Completed This Form: Lee Logston Phone #: 505-6955-6914

To be recorded by City Clerk: \_\_\_\_\_ Email: lrlogston@santafenm.gov

Clerk # \_\_\_\_\_

Date of Execution: \_\_\_\_\_

ITT Representative (attesting that all information is reviewed)

Title

Date









# 24-0041 New Mexico Department of Finance and Administration

Final Audit Report

2024-02-01

Created:	2024-02-01
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAAEhIVF21tw-TcQQRzkgNCv7Y_wyePqhrE

## "24-0041 New Mexico Department of Finance and Administration" History

-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)  
2024-02-01 - 10:38:10 PM GMT- IP address: 63.232.20.2
-  Document emailed to Alan Webber (amwebber@santafenm.gov) for signature  
2024-02-01 - 10:39:23 PM GMT
-  Email viewed by Alan Webber (amwebber@santafenm.gov)  
2024-02-01 - 11:38:44 PM GMT- IP address: 172.226.3.24
-  Document e-signed by Alan Webber (amwebber@santafenm.gov)  
Signature Date: 2024-02-01 - 11:38:58 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Document emailed to Geralyn Cardenas (gfcardenas@santafenm.gov) for signature  
2024-02-01 - 11:38:59 PM GMT
-  Email viewed by Geralyn Cardenas (gfcardenas@santafenm.gov)  
2024-02-01 - 11:43:10 PM GMT- IP address: 104.47.65.254
-  Document e-signed by Geralyn Cardenas (gfcardenas@santafenm.gov)  
Signature Date: 2024-02-01 - 11:43:22 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.  
2024-02-01 - 11:43:22 PM GMT