

**RECORD OF PROCEEDINGS RELATING TO THE ADOPTION OF
RESOLUTION NO. R-17-37 OF THE BOARD OF COUNTY COMMISSIONERS
GRANT COUNTY, AUGUST 17, 2017**

STATE OF NEW MEXICO)
) ss.
COUNTY OF GRANT)

The Board of County Commissioners (the "Governing Body") of Grant County (the "Grantee") met in a regular session in full conformity with the law and the rules and regulations of the Governing Body at Commissioners Conference Room, Administration Building, 1400 Highway 180 East, Silver City, NM 88062,, being the meeting place of the Governing Body for the meeting held on the 17th day of August, 2017 at the hour of 9:00 a.m. Upon roll call, the following members and officers were found to be present:

Present:

Brett Kasten

Gabriel Ramos

Gerald W. Billings

Alicia Edwards

Harry Browne

Absent:

Also Present:

Thereupon, there was officially filed with the County Clerk a copy of a proposed Resolution in final form, as follows:

**GRANT COUNTY
RESOLUTION NO. R-17-37**

AUTHORIZING THE EXECUTION AND DELIVERY OF A LOCAL GOVERNMENT PLANNING GRANT AGREEMENT BY AND BETWEEN THE NEW MEXICO FINANCE AUTHORITY (THE "FINANCE AUTHORITY"), AND GRANT COUNTY (THE "GRANTEE"), IN THE AMOUNT OF TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500) EVIDENCING AN OBLIGATION OF THE GRANTEE TO UTILIZE THE GRANT AMOUNT AND THE LOCAL MATCH AMOUNT SOLELY FOR THE PURPOSE OF FINANCING THE COSTS OF A COMPREHENSIVE PLAN, AND SOLELY IN THE MANNER DESCRIBED IN THE GRANT AGREEMENT; CERTIFYING THAT THE GRANT AMOUNT, TOGETHER WITH THE LOCAL MATCH AMOUNT AND OTHER FUNDS AVAILABLE TO THE GRANTEE, IS SUFFICIENT TO COMPLETE THE PROJECT; APPROVING THE FORM OF AND OTHER DETAILS CONCERNING THE GRANT AGREEMENT; RATIFYING ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTION INCONSISTENT WITH THIS RESOLUTION; AND AUTHORIZING THE TAKING OF OTHER ACTIONS IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THE GRANT AGREEMENT.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of the Resolution unless the context requires otherwise.

WHEREAS, the Grantee is a political subdivision of the state, being a legally and regularly created, established, organized and existing County under the general laws of the State and more specifically, NMSA 1978, §§ 4-7-1 through 4-7-3, as amended; and

WHEREAS, the Grantee is qualified to receive the Planning Grant pursuant to the Finance Authority's Rules Governing the Local Government Planning Fund and NMSA 1978, § 6-21-6.4, as amended; and

WHEREAS, the Governing Body hereby determines that the Project may be financed with amounts granted pursuant to the Grant Agreement, that the Grant Amount, together with the Local Match and other moneys available to the Grantee, is sufficient to complete the Project, and that it is in the best interest of the Grantee and the public it serves that the Grant Agreement be executed and delivered and that the funding of the Project take place by executing and delivering the Grant Agreement; and

WHEREAS, the Governing Body has determined that it may lawfully enter into the Grant Agreement, accept the Grant Amount and be bound to the obligations and by the restrictions thereunder; and

WHEREAS, the Grantee acknowledges and understands that the Planning Grant must be expended and a Planning Document must be completed within one (1) year from the Closing

Date, or the Grantee will forfeit the ability to draw Grant funds from the Local Government Planning Fund; and

WHEREAS, the Grant Agreement shall not constitute a general obligation of the Grantee or a debt or pledge of the faith and credit of the Grantee, the Finance Authority or the State; and

WHEREAS, there have been presented to the Governing Body and there presently are on file with the County Clerk this Resolution and the form of the Grant Agreement which is incorporated by reference and made a part hereof; and

WHEREAS, all required authorizations, consents and approvals in connection with (i) the use of the Grant Amount for the purposes described and according to the restrictions set forth in the Grant Agreement; and (ii) the authorization, execution and delivery of the Grant Agreement which are required to have been obtained by the date of this Resolution, have been obtained or are reasonably expected to be obtained.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GRANT COUNTY, NEW MEXICO:

Section 1. Definitions. All terms used herein have the same definition as contained in the draft Grant Agreement, dated August 25, 2017.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Resolution) by the Grantee and officers of the Grantee, directed toward the Project and the execution and delivery of the Grant Agreement, shall be and the same hereby is ratified, approved and confirmed.

Section 3. Authorization of the Project and the Grant Agreement. The Project and the method of funding the Project through execution and delivery of the Grant Agreement are hereby authorized and ordered. The Project is for the benefit and use of the Grantee and the public it serves.

Section 4. Findings. The Governing Body on behalf of the Grantee hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The Project is needed to address land use, housing, transportation, infrastructure, and economic development.

B. The costs of the Project are beyond the local control and resources of the Grantee.

C. The Project and the execution and delivery of the Grant Agreement pursuant to the Act to provide funds for the financing of the Project are in the interest of the public health, safety and welfare of the public served by the Grantee.

D. The Grantee will perform (or cause to be performed) the Project with the proceeds of the Planning Grant, and will utilize the Project for the purposes set forth in the Grant Agreement.

E. The Grantee will forfeit the Planning Grant if the Grantee fails to utilize the Grant Amount within one (1) year of the Closing Date.

F. The Local Match is legally available to be applied to the Project.

Section 5. Grant Agreement—Authorization and Detail.

A. Authorization. This Resolution has been adopted by the affirmative vote of a majority of a quorum of the Governing Body. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the public served by the Grantee and performing the Project, it is hereby declared necessary that the Grantee execute and deliver the Grant Agreement evidencing the Grantee's acceptance of the Grant Amount of Twelve Thousand Five Hundred Dollars (\$12,500) and the availability of the Local Match in the amount of Thirty Seven Thousand Five Hundred Dollars (\$37,500) to be utilized solely for the Project and solely in the manner and according to the restrictions set forth in the Grant Agreement, the execution and delivery of which are hereby authorized. The Grantee shall use the proceeds of the Grant and the Local Match to finance the performance of the Project. The Project will be owned by the Grantee and will be utilized by the Grantee as set forth in the Grant Agreement.

B. Detail. The Grant Agreement shall be in substantially the form of the Grant Agreement presented at the meeting of the Governing Body at which this Resolution was adopted. The Grant shall be in the amount of Twelve Thousand Five Hundred Dollars (\$12,500).

Section 6. Approval of Grant Agreement. The form of the Grant Agreement as presented at the meeting of the Governing Body at which this Resolution was adopted is hereby approved. Authorized Officers are hereby individually authorized to execute, acknowledge and deliver the Grant Agreement with such changes, insertions, and deletions as may be approved by such individual Authorized Officers, and the County Clerk is hereby authorized to affix the seal of the Grantee on the Grant Agreement and attest the same. The execution of the Grant Agreement shall be conclusive evidence of such approval.

Section 7. Disposition of Proceeds; Completion of Acquisition of the Project.

A. Grant Account. The Grantee hereby consents to creation of the Grant Account by the Finance Authority and approves of the deposit of the Grant Amount into the Grant Account. Until the Completion Date, the money in the Grant Account shall be used and paid out solely for the purpose of the Project in compliance with applicable law and the provisions of the Grant Agreement.

B. Completion of Acquisition of the Project. The Grantee shall proceed to acquire and complete the Project with all due diligence. Upon the Completion Date, the Grantee

shall execute a certificate substantially in the form attached as Exhibit "C" to the Grant Agreement stating that acquisition of and payment for the Project have been completed. As soon as practicable and, in any event, not more than sixty (60) days after the Completion Date, any balance remaining in the Grant Account shall be transferred and returned to the Local Government Planning Grant Fund.

C. Finance Authority Not Responsible. The Finance Authority shall in no manner be responsible for the application or disposal by the Grantee or by the officers of the Grantee of the funds derived from the Grant Agreement or of any other funds held by or made available to the Grantee's in connection with use of the Project.

Section 8. Authorized Officers. Authorized Officers are hereby individually authorized and directed to execute and deliver any and all papers, instruments, opinions, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the Grant Agreement, and all other transactions contemplated hereby and thereby. Authorized Officers are hereby individually authorized to do all acts and things required of them by this Resolution and the Grant Agreement for the full, punctual and complete performance of all the terms, covenants and agreements contained in this Resolution and the Grant Agreement, including, but not limited to, the execution and delivery of closing documents in connection with the execution and delivery of the Grant Agreement.

Section 9. Amendment of Resolution. This Resolution after its adoption may be amended without receipt by the Grantee of any additional consideration, but only with the prior written consent of the Finance Authority.

Section 10. Resolution Irrepealable. After the Grant Agreement has been executed and delivered, this Resolution shall be and remain irrepealable until all obligations of the Grantee under the Grant Agreement shall be fully discharged, as herein provided.

Section 11. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 12. Repealer Clause. All bylaws, orders, resolutions, ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 13. Effective Date. Upon due adoption of this Resolution, it shall be recorded in the book of the Grantee kept for that purpose, authenticated by the signatures of the Chair and County Clerk of the Grantee, and this Resolution shall be in full force and effect thereafter, in accordance with law; provided, however, that if recording is not required for the effectiveness of this Resolution, this Resolution shall be effective upon adoption of this Resolution by the Governing Body.

Section 14. Execution of Agreements. Grant County through its Governing Body agrees to authorize and execute all such agreements with the Finance Authority as are necessary to consummate the Grant contemplated herein and consistent with the terms and conditions attached hereto.

PASSED, APPROVED AND ADOPTED THIS 17th DAY OF AUGUST 2017.

GRANT COUNTY

By Brett Kasten
Brett Kasten, Chairman

[SEAL]
ATTEST
By Marisa Castrillo
Marisa Castrillo, County Clerk

[Remainder of page intentionally left blank.]

Governing Body Member Ramos then moved adoption of the foregoing Resolution, duly seconded by Governing Body Member Browne.

The motion to adopt said Resolution, upon being put to a vote was passed and adopted on the following recorded vote:

Those Voting Aye: Brett Kasten
Gabriel Ramos
Gerald W. Billings
Alicia Edwards
Harry Browne

Those Voting Nay: 0

Those Absent: 0

Five (5) members of the Governing Body having voted in favor of said motion, the Chairman declared said motion carried and said Resolution adopted, whereupon the Chairman and the County Clerk signed the Resolution upon the records of the minutes of the Governing Body.

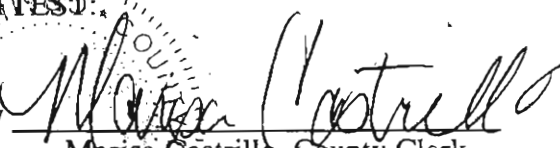
After consideration of matters not relating to the Resolution, the meeting on motion duly made, seconded and carried, was adjourned.


[Signature page follows.]

GRANT COUNTY

By 
Brett Kasten, Chairman

[SEAL]

ATTEST:
By 
Marisa Castrillo, County Clerk



[Remainder of page intentionally left blank.]

STATE OF NEW MEXICO)
) ss.
COUNTY OF GRANT)

I, Marisa Castrillo, the duly qualified and acting County Clerk of Grant County (the "Grantee"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the Board of County Commissioners of the Grantee constituting the Governing Body of the Grantee, had and taken at a duly called regular meeting held at the Commissioners Conference Room, Administration Building, 1400 Highway 180 East, Silver City, NM 88062, on August 17, 2017 at the hour of 9:00 a.m., insofar as the same relate to the adoption of Resolution No. R-17-37 and the execution and delivery of the proposed Grant Agreement, a copy of which is set forth in the official records of the proceedings of the Governing Body kept in the offices of the Grantee. None of the action taken in the said proceedings has been rescinded, repealed or modified.

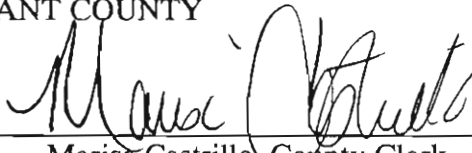
2. Said proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at said meeting, as therein shown.

3. Notice of said meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the State Open Meetings Act, NMSA 1978, § 10-15-1, as amended, including, Grantee's Open Meetings Resolution No. R-17-01 dated January 12, 2017 and presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of August 2017.

GRANT COUNTY

By


Marisa Castrillo, County Clerk

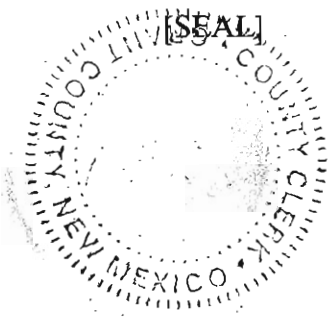


EXHIBIT “A”

Notice of Meeting

\$12,500
Grant County
Planning Grant Agreement
Finance Authority No. 3618PG

STATE OF NEW MEXICO)
) ss. **CERTIFICATE OF GRANTEE**
COUNTY OF GRANT)

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Chairman and County Clerk of Grant County (the "Grantee"), State of New Mexico, that:

Capitalized terms used in this Certificate have the same meanings as defined in Resolution No. R-17-37 adopted by the Governing Body of the Grantee on August 17, 2017 (the "Resolution") in connection with this Planning Grant, unless otherwise defined in this Certificate or the context requires otherwise.

1. The Grantee is a political subdivision of the state, being a legally and regularly created, established, organized and existing County under the general laws of the State and more specifically, NMSA 1978, §§ 4-7-1 through 4-7-3, as amended;
2. The resolutions, rules and regulations governing the Project and customer service by the Grantee have been duly adopted and are now in full force and effect;
3. The Authorized Officers and Governing Body of the Grantee were duly and validly elected or appointed and are empowered to act for the Grantee; and
4. The Grantee has all requisite corporate power:
 - (a) To perform or cause performance of the Project funded by the Planning Grant and the Local Match;
 - (b) To execute and deliver Grant documents, including but not limited to those identified above; and
 - (c) To perform all acts required by such Grant documents to be done by the Grantee.
5. All proceedings of the Grantee, its elected and appointed officers, and employees, required or necessary to be taken in connection with the authorization of the actions specified above have been duly taken and all such authorizations are presently in full force and effect.
6. The Resolution and the Grant Agreement have been duly signed and adopted in accordance with all applicable laws and neither has been repealed, rescinded, revoked, modified, amended or supplemented in any manner except as set forth in the Resolution. The Resolution

constitutes valid and sufficient legal authority for the Grantee to carry out and enforce the provisions of the Grant Agreement.

7. No event will result from the execution and delivery of the Grant Agreement that constitutes a default or an Event of Default under either the Grant Agreement or the Resolution, and no Event of Default and no default under the Grant Agreement or the Resolution has occurred and is continuing on the date of this Certificate.

8. The Grantee has duly authorized and approved the consummation by it of all transactions, and has complied with all requirements and satisfied all conditions, which are required by the Grant Agreement to have been authorized, approved, performed or consummated by the Grantee at or prior to the date of this Certificate. The Grantee has full legal right, power and authority to carry out and consummate the transactions contemplated by the Resolution and the Grant Agreement.

9. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the enforceability of the Grant Agreement or any of the actions required to be taken by the Resolution or the Grant Agreement to the date of this Certificate have been obtained and are in full force and effect.

10. All approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to the completion of the Project have been obtained and are in full force and effect.

11. Neither the Grantee's adoption of the Resolution nor any action contemplated by or pursuant to the Resolution or the Grant Agreement conflicts or will conflict with, or constitute a breach by the Grantee of, or default by the Grantee under any law, court decree or order, governmental regulation, rule or order, resolution, agreement, indenture, mortgage or other instrument to which the Grantee is subject or by which it is bound.

12. There is no actual or threatened action, suit, proceeding, inquiry or investigation against the Grantee, at law or in equity, by or before any court, public board or body, nor to the Grantee's knowledge is there any basis therefore, affecting the existence of the Grantee or the titles of its officials to their respective offices, or in any way materially adversely affecting or questioning (a) the territorial jurisdiction of the Grantee, (b) the use of the proceeds of the Grant Agreement for the Project, (c) the validity or enforceability of the Grant Agreement or any proceedings of the Grantee with respect to the Grant Agreement or the Resolution, (d) the execution and delivery of the Grant Agreement or (e) the power of the Grantee to carry out the transactions contemplated by the Grant Agreement or the Resolution.

13. From at least May 1, 2017, to and including the date of this Certificate, the following were and now are the duly chosen, qualified and acting officers and members of the Governing Body of the Grantee:

Brett Kasten, Chairman

Gabriel Ramos, Vice-Chair

Alicia Edwards, Member

Gerald W. Billings Jr., Member

Harry Browne, Member

Marisa Castrillo, County Clerk

14. To the best of our knowledge and belief after due investigation, none of the Events of Default referred to in Article IX of the Grant Agreement has occurred.

15. The Grantee has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof, and the representations and warranties of the Grantee contained in the Grant Agreement and in the Resolution are true and correct as of the date of this Certificate.

16. To the best of our knowledge and belief after due investigation, neither the Chairman, the County Clerk, any member of the Governing Body of the Grantee, nor any other officer, employee or other agent of the Grantee is interested (except in the performance of his or her official rights, privileges, powers and duties), directly or indirectly, in the profits of any contract, or job for work, or services to be performed and appertaining to the Project.

17. Regular meetings of the Grantee's Governing Body and the meeting at which the Resolution was adopted have been held at the Commissioners Conference Room, Administration Building, 1400 Highway 180 East, Silver City, NM 88062, the principal meeting place of the Grantee.

18. The Grantee's Governing Body has no rules of procedure which would invalidate or make ineffective the Resolution or other action taken by the Grantee's Governing Body in connection with the Grant Agreement. The Open Meetings Act Resolution No. R-17-01 (the "Open Meetings Act Resolution") adopted and approved by the Governing Body on January 12, 2017 establishes notice standards as required by Section 10-15-1, NMSA 1978, as amended and supplemented. The Open Meetings Act Resolution has not been amended or repealed. All action of the Governing Body with respect to the Grant Agreement and Resolution was taken at meetings held in compliance with the Open Meetings Act Resolution.

19. The Chairman and the County Clerk, on the date of the signing of the Grant Agreement and on the date of this Certificate, are the duly chosen, qualified and acting officers of the Grantee authorized to execute the Grant Agreement.

20. This Certificate is for the benefit of the Finance Authority.

21. This Certificate may be executed in counterparts.

WITNESS our signatures and the seal of the Grantee this 25th day of August 2017.

GRANT COUNTY

By Brett Kasten
Brett Kasten, Chairman

[SEAL]
ATTEST:
By Marisa Castrillo
Marisa Castrillo, County Clerk

\$ 12,500

PLANNING GRANT AGREEMENT

dated

August 25, 2017

by and between

NEW MEXICO FINANCE AUTHORITY

and

GRANT COUNTY

PLANNING GRANT AGREEMENT

THIS PLANNING GRANT AGREEMENT (the "Grant agreement"), dated August 25, 2017, is entered into by and between the NEW MEXICO FINANCE AUTHORITY (the "Finance Authority") and the GRANT COUNTY (the "Grantee").

WITNESSETH:

WHEREAS, the Finance Authority is a public body politic and corporate, separate and apart from the State of New Mexico (the "State"), constituting a governmental instrumentality, duly organized and created under and pursuant to the laws of the State, particularly NMSA 1978 §§ 6-21-1 through 6-21-31, as amended, (the "New Mexico Finance Authority Act"); and

WHEREAS, NMSA 1978, § 6-21-6.4, as amended, creates the Local Government Planning Fund to be administered by the Finance Authority to make Grants to qualified entities to develop economic development plans and pay administrative costs of the local government planning fund program; and

WHEREAS, Grantee is a political subdivision of the state, being a legally and regularly created, established, organized and existing County under the general laws of the State and more specifically, NMSA 1978, §§ 4-7-1 through 4-7-3, as amended; and

WHEREAS, the Grantee is qualified to receive the Planning Grant pursuant to the Finance Authority's Rules and NMSA 1978, § 6-21-6.4, as amended; and

WHEREAS, the Grantee has applied to the Finance Authority for Planning Grant (as defined below) funding and has determined that it is in the best interest of the Grantee and the public it serves that the Grantee enter into this Grant Agreement with the Finance Authority and accept a grant in the amount of Twelve Thousand Five Hundred Dollars (\$12,500) from the Finance Authority to carry out the Project, as more fully described in Exhibit "A" attached hereto; and

WHEREAS, the Grantee acknowledges and understands that the Planning Grant must be expended and the Planning Documents must be completed within one (1) year from the Closing Date, or the Grantee will forfeit the ability to draw Grant funds from the Local Government Planning Fund; and

WHEREAS, the Grantee is prepared to perform all its obligations and to observe and obey all restrictions on the use of the Grant set forth in this Grant Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual promises and covenants contained herein, the parties hereto agree:

ARTICLE I: DEFINITIONS

As used in this Agreement, including the foregoing recitals, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

“Agreement Term” means the term of this Grant Agreement as provided under Article III of this Grant Agreement.

“Authorized Officers” means, with respect to the Grantee, any one or more of the Grantee’s Chairperson or Vice-Chairperson of the Governing Body, County Manager and County Clerk thereof, and in the case of the Finance Authority the Chairperson, Vice-Chairperson and Secretary of the Board of Directors and the Chief Executive Officer, or any other officer or employee of the Finance Authority designated in writing by an Authorized Officer.

“Closing Date” means the date of execution, delivery and funding of this Grant Agreement.

“Event of Default” means one or more events of default as defined in Article IX of this Grant Agreement.

“Finance Authority” means the New Mexico Finance Authority.

“Force Majeure” means any act of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes, lockouts or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party’s control.

“Governing Body” means the Board of County Commissioners of the Grantee, or any future governing body of the Grantee.

“Grant or Grant Amount” means the sum of Twelve Thousand Five Hundred Dollars (\$12,500).

“Grant Account” means the account in the name of the Grantee established pursuant to this Grant Agreement and held by the Finance Authority for deposit of the Grant Amount for disbursement to the Grantee for payment of the costs of the Project.

“Grant Agreement” means this grant agreement and any amendments or supplements hereto, including the Exhibits attached hereto.

“Grantee” means Grant County, New Mexico.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove,” “hereafter” and similar words refer to this entire Grant Agreement and not solely to the particular section or paragraph of this Grant Agreement in which such word is used.

“Local Government Planning Fund” means the fund of the same name created pursuant to the Act and held and administered by the Finance Authority.

“Local Match” means Thirty Seven Thousand Five Hundred Dollars (\$37,500). .

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Planning Document” means a written document in the form of a comprehensive plan, created for the purpose of evaluating and estimating the costs of alternatives to meet the Grantee’s public project needs, namely land use, housing, transportation, infrastructure, and economic development.

“Planning Grant” or “Grant” means the amount provided to the Grantee pursuant to the Grant Agreement for the purpose of funding the Project, and is equal to the Grant Amount.

“Policy” or “Policies” means the New Mexico Finance Authority Local Government Planning Fund Project Management Policies.

“Project” means the preparation of the Planning Document as more particularly described in Exhibit “A” hereto.

“Resolution” means the Grantee’s Resolution No. R-17-37 adopted on August 17, 2017, authorizing the Grantee’s acceptance of the terms and conditions of this Grant Agreement.

“Rules” mean the Rules governing the Local Government Planning Fund as adopted by the Board of Directors of the Finance Authority, as amended and supplemented from time to time.

ARTICLE II: REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 2.1. Representations, Warranties and Covenants of the Grantee. The Grantee represents, warrants and covenants as follows:

(a) Binding Nature of Covenants. All covenants, stipulations, obligations and agreements of the Grantee contained in this Grant Agreement and the Resolution shall be deemed to be the covenants, stipulations, obligations and agreements of the Grantee to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Grantee and its successors and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreement shall be transferred by or in accordance with law. Except as otherwise provided in this Grant Agreement, all rights, powers and privileges conferred and duties and liabilities imposed upon the Grantee by the provisions of this Grant Agreement and the Resolution shall be exercised or performed by the Grantee or by such residents, officers, or officials of the Grantee as may be required by law to exercise such powers and to perform such duties.

(b) Personal Liability. No covenant, stipulation, obligation or agreement contained in this Grant Agreement shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the Grantee or member of the Governing Body in his or her individual capacity, and neither the members of the Governing Body nor any officer executing this Grant Agreement shall be liable personally on this Grant Agreement or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

(c) Authorization of Grant Agreement. The Grantee is a political subdivision of the state, being a legally and regularly created, established, organized and existing County under the general laws of the State and more specifically, NMSA 1978, §§ 4-7-1 through 4-7-3, as amended. Pursuant to the laws of the State, as amended and supplemented from time to time, the Grantee is authorized to enter into the transactions contemplated by this Grant Agreement and to carry out its obligations hereunder. The Grantee has duly authorized and approved the execution and delivery of this Grant Agreement and the other documents related to the transaction.

(d) Use of Grant Agreement Proceeds. The Grantee shall apply the proceeds of the Grant solely to the acquisition and completion of the Project, shall not use the Grant proceeds for any other purpose, and shall comply with all applicable ordinances and regulations, if any, and any and all applicable laws relating to the Project. The Grantee shall immediately apply all Grant proceeds disbursed to it toward the Project. The Grantee shall use the Grant proceeds and complete the Planning Document within one (1) year of the Closing Date or shall forfeit the full amount of the Grant.

(e) Selection of Contractors. All contractors providing services or materials in connection with the Project shall be selected in accordance with applicable provisions of the New Mexico Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, as amended, or, if the Grantee is not subject to the New Mexico Procurement Code, shall be selected in accordance with a documented procurement process duly authorized and established pursuant to laws and regulations applicable to the Grantee.

(f) Completion of Project. The Project will consist of the preparation of the Planning Document to address land use, housing, transportation, infrastructure, and economic development, and will be completed so as to comply with all applicable ordinances and regulations, if any, and any and all applicable laws, rules, and regulations of the State relating to the acquisition and completion of the Project and to the use of the Grant proceeds. If requested by the Finance Authority, the Grantee will allow the the New Mexico Economic Development Department or other appropriate agency of the State, or the Finance Authority to assist with completion of the Project and to review the Project as completed to assure compliance with applicable laws, rules and regulations of the State. The completed Planning Document must be in a form acceptable to and approved by the Finance Authority, in its sole discretion.

(g) Necessity of Project. The completion of the Project under the terms and conditions provided in this Grant Agreement is necessary, convenient and in furtherance of the governmental purposes of the Grantee and is in the best interest of the Grantee and the public it serves.

(h) Legal, Valid and Binding Obligation. The Grantee has taken all required action necessary to authorize the execution and delivery of this Grant Agreement and this Grant Agreement constitutes a legal agreement of the Grantee enforceable in accordance with its terms.

(i) Benefit to Grantee. The Project will at all times be used for the purpose of benefiting the Grantee and the public it serves as a whole.

(j) Grant Amount Does Not Exceed Project Cost. The Grant Amount as provided herein does not exceed the cost of the Project.

(k) No Breach or Default Caused by Grant Agreement. Neither the execution and delivery of this Grant Agreement, nor the fulfillment of or compliance with the terms and conditions in this Grant Agreement, nor the consummation of the transactions contemplated herein conflicts with or results in a breach of any terms, conditions or provisions of, or any restrictions contained in, any agreement or instrument to which the Grantee is a party or by which the Grantee is bound or any laws, ordinances, governmental rules or regulations or court or other governmental orders to which the Grantee or its properties are subject, or constitutes a default under any of the foregoing.

(l) Irrevocability of Grant Agreement. The terms of this Grant Agreement shall be irrevocable until the Project has been fully acquired and completed, and shall not be subject to amendment or modification in any manner which would result in any use of the proceeds of this Grant Agreement in a manner not permitted or contemplated by the terms hereof.

(m) No Litigation. To the best knowledge of the Grantee, no litigation or proceeding is pending or threatened against the Grantee or any other person affecting the right of the Grantee to execute this Grant Agreement or to comply with its obligations under this Grant Agreement. Neither the execution of this Grant Agreement by the Grantee nor compliance by the Grantee with the obligations hereunder requires the approval of any regulatory body, or any other entity, which approval has not been obtained or which is not reasonably expected to be obtained.

(n) Occurrence of Event of Default. No event has occurred and no condition exists which, upon the execution and delivery of this Grant Agreement, would constitute an Event of Default on the part of the Grantee hereunder.

(o) Grantee's Existence. The Grantee will maintain its legal identity and existence for the Agreement Term, unless another political subdivision by operation of law succeeds to the liabilities, rights, and duties of the Grantee without adversely affecting to any substantial degree the privileges and rights of the Finance Authority.

(p) Reports to Finance Authority. The Grantee shall report at least semi-annually to the Finance Authority on the status of the Planning Document.

(q) Records. The Grantee shall properly maintain separate project accounts in accordance with generally accepted accounting principles and conduct an annual audit or review of the Grantee's financial records related to the Project.

(r) Local Match. The Local Match is legally available for the Project, has been applied by Grantee solely for the purposes of the Project and sufficient evidence of the Local Match has been provided to the Finance Authority.

Section 2.2. Representations, Warranties and Covenants of the Finance Authority. The Finance Authority represents, warrants and covenants as follows:

(a) The Finance Authority is a public body politic and corporate, separate and apart from the State, constituting a governmental instrumentality duly organized, existing and in good standing under the laws of the State, has all necessary power and authority to enter into and perform and observe the covenants and agreements on its part contained in this Grant Agreement and, by proper action, has duly authorized the execution and delivery of this Grant Agreement.

(b) This Agreement constitutes a legal, valid and binding obligation of the Finance Authority enforceable in accordance with its terms.

ARTICLE III: AGREEMENT TERM

The Agreement Term shall commence on the Closing Date and shall terminate upon the earliest of the following events: a determination by the Finance Authority that (a) the Grantee is unable to proceed with the Project for the foreseeable future or has failed to commence the Project in a reasonably timely manner, (b) the Grant or any portion thereof is not necessary for the Project (in which case the Grant Amount may be modified by the Finance Authority) or (c) the Grantee has failed to utilize the Planning Grant to complete the Planning Document within one year of the Closing Date.

ARTICLE IV: GRANT; APPLICATION OF MONEYS

On the Closing Date, the Finance Authority shall transfer the amount shown on Exhibit "A" into the Grant Account to be disbursed by the Finance Authority pursuant to Section 6.2 of this Grant Agreement at the direction of the Grantee, as needed by the Grantee to acquire and complete the Project.

ARTICLE V: GRANT TO THE GRANTEE

Section 5.1. Grant to the Grantee. The Finance Authority hereby grants and the Grantee hereby accepts an amount equal to the Grant Amount. The Finance Authority shall establish and maintain, on behalf of the Grantee, a Grant Account, which Grant Account shall be kept separate and apart from all other accounts of the Finance Authority. The Grantee hereby pledges to the Finance Authority all its rights, title and interest in the funds held in the Grant Account for the purpose of securing the Grantee's obligations under this Grant Agreement. Funds in the Grant Account shall be disbursed as provided in Sections 6.2 and 6.3 hereof.

Section 5.2. No General Obligation. No provision of this Grant Agreement shall be construed or interpreted as creating a general obligation or other indebtedness of the Grantee within the meaning of any constitutional or statutory debt limitation.

Section 5.3. Investment of Moneys in Grant Account. Money on deposit in the Grant Account may be invested by the Finance Authority for the credit of the Local Government Planning Fund.

ARTICLE VI: THE PROJECT

Section 6.1. Agreement to Acquire and Complete the Project. The Grantee hereby agrees that in order to effectuate the purposes of this Grant Agreement and to acquire and complete the Project it shall take such steps as are necessary and appropriate to acquire and complete the Project lawfully, efficiently and within one (1) year of the Closing Date.

Section 6.2. Disbursements from the Grant Account. So long as no Event of Default shall occur, the Finance Authority shall disburse moneys from the Grant Account, either to the Grantee or to vendors and contractors, as determined by the Finance Authority in its sole discretion, upon receipt by the Finance Authority of a requisition substantially in the form of Exhibit "B" attached hereto signed by an Authorized Officer of the Grantee, supported by certification by the Grantee's project architect, engineer, or other such authorized representative of the Grantee acceptable to the Finance Authority that the amount of the disbursement request represents the progress of completion, acquisition or other Project related activities accomplished as of the date of the disbursement request. The Grantee shall provide such records or access to the Project as the Finance Authority, in its sole discretion, may request in connection with the approval of the Grantee's disbursement requests made hereunder. No disbursement from the Grant Account may be made without receipt of evidence of the Local Match.

Section 6.3. Determination of Eligibility as condition Precedent to Disbursement. Prior to the disbursement of the Grant Amount or any portion thereof, the Finance Authority shall have determined that the Grantee has met the readiness to proceed requirements established for the Grant by the Finance Authority and no Event of Default shall have occurred. No disbursement shall be made from the Grant Account except upon a determination by the Finance Authority that such disbursement is for payment of Project expenses, and that the disbursement does not exceed any limitation upon the amount payable.

Section 6.4. Reimbursement for Prior Expenditures. The Finance Authority, so long as no Event of Default shall occur and upon presentation of the Grantee's disbursement request with such certification and records as are required in accordance with Section 6.2 hereof, may disburse moneys from the Grant Account for reimbursement of Project expenses incurred after the Finance Authority Board of Directors approved the grant on September 22, 2016.

Section 6.5. Completion of Disbursement of Grant Funds. Upon completion of disbursement of the Grant Amount, an Authorized Officer of the Grantee shall deliver a certificate of completion, substantially in the form attached to this Grant Agreement as Exhibit

“C”, to the Finance Authority stating that, to the best of the Authorized Officer’s knowledge the Project has been completed and the entire Grant Amount has been disbursed in accordance with the terms of this Grant Agreement. If any portion of the Grant Amount remains upon the delivery of the certificate of completion, the Finance Authority may, in its sole discretion, modify this Grant Agreement and reduce the amount of the Grant.

ARTICLE VII: COMPLIANCE WITH LAWS AND RULES; OTHER COVENANTS

Section 7.1. Further Assurances and Corrective Instruments. The Finance Authority and the Grantee agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the terms and intention hereof.

Section 7.2. Finance Authority and Grantee Representatives. Whenever under the provisions of this Grant Agreement the approval of the Finance Authority or the Grantee is required, or the Grantee or the Finance Authority is required to take some action at the request of the other, such approval or such request shall be given for the Finance Authority or for the Grantee by an Authorized Officer of the Finance Authority or the Grantee, as the case may be, and any party hereto shall be authorized to act or rely on any such approval or request.

Section 7.3. Requirements of Law. During the Agreement Term, the Grantee shall observe and comply promptly with all applicable federal, State and local laws and regulations affecting the Project, and all current and future orders of all courts and agencies of the State having jurisdiction over the Project and matters related to the Project.

ARTICLE VIII: NON-LIABILITY OF FINANCE AUTHORITY FOR ACTS OR OMISSIONS OF THE GRANTEE; INDEMNIFICATION

Section 8.1. Non-Liability of Finance Authority. The Finance Authority shall not be liable in any manner for the Project, Grantee’s use of the Grant, the ownership, operation or maintenance of the Project, or any failure to act properly by the owner or operator of the Project.

Section 8.2. Indemnification of Finance Authority. The Finance Authority shall not be responsible for any act or omission of the Grantee upon which any claim, by or on behalf of any person, firm, corporation or other legal entity may be made, whether arising from the establishment or modification of the Project or otherwise. To the extent permitted by law, the Grantee shall and hereby agrees to indemnify and save harmless the Finance Authority and its designee, if any, from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the acquisition and completion of the Project. In the event of any action or proceeding brought on any such claim, upon notice from the Finance Authority or its designee, Grantee shall defend the Finance Authority and its designee, if any, in any such action or proceeding.

ARTICLE IX: EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default Defined. Any one of the following shall be an Event of Default under this Agreement:

(a) Use of the Grant Amount, or any portion thereof, by the Grantee for purposes other than the Project;

(b) Failure by the Grantee to utilize the Grant proceeds to complete the Project within one (1) year of the Closing Date;

(c) Failure by the Grantee to observe and perform any other covenant, condition or agreement on its part to be observed or performed under this Grant Agreement for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Grantee by the Finance Authority, unless the Finance Authority shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice can be wholly cured within a period of time not materially detrimental to the rights of the Finance Authority, but cannot be cured within the applicable thirty (30) day period, the Finance Authority will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Grantee within the applicable period and diligently pursued until the failure is corrected; and provided, further, that if by reason of Force Majeure the Grantee is unable to carry out the agreements on its part herein contained, the Grantee shall not be deemed in default under this paragraph during the continuance of such inability (but Force Majeure shall not excuse any other Event of Default); or

(d) Any warranty, representation or other statement by or on behalf of the Grantee contained in this Grant Agreement or in any instrument furnished in compliance with or in reference to this Grant Agreement is false or misleading in any material respect.

Section 9.2. Remedies on Default. Whenever any Event of Default has occurred and is continuing, and subject to Section 9.3 hereof, the Finance Authority may take whatever of the following actions may appear necessary or desirable to enforce performance of any agreement of the Grantee in this Grant Agreement:

(a) File a mandamus proceeding or other action or proceeding or suit at law or in equity to compel the Grantee to perform or carry out its duties under the law and the agreements and covenants required to be performed by it contained herein;

(b) Terminate this Grant Agreement;

(c) Cease disbursing any further amounts from the Grant Account;

(d) Demand that the Grantee immediately repay the Grant Amount or any portion thereof if such funds were not utilized in accordance with this Grant Agreement;

(e) File a suit in equity to enjoin any acts or things which are unlawful or violate the rights of the Finance Authority; or

(f) Take whatever other action at law or in equity may appear necessary or desirable to enforce any other of its rights hereunder.

The Grantee shall be responsible for reimbursing the Finance Authority for any and all fees and costs incurred in enforcing the terms of this Grant Agreement.

Section 9.3 Limitations on Remedies. A judgment requiring repayment of money entered against the Grantee may reach any available funds of the Grantee to the extent permitted by law.

Section 9.4. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Finance Authority is intended to be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Finance Authority to exercise any remedy reserved in this Article IX, it shall not be necessary to give any notice, other than such notice as may be required in this Article IX.

Section 9.5. Waivers of Events of Default. The Finance Authority may in its sole discretion waive any Event of Default hereunder and the consequences of such an Event of Default; provided, however, all expenses of the Finance Authority in connection with such Event of Default shall have been paid or provided for. Such waiver shall be effective only if made by written statement of waiver issued by the Finance Authority. In case of any such waiver or rescission, or in case any proceeding taken by the Finance Authority on account of any Event of Default shall have been discontinued or abandoned or determined adversely, then the Finance Authority and the Grantee shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

Section 9.6. No Additional Waiver Implied by One Waiver. In the event that any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be in writing and limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE X: MISCELLANEOUS

Section 10.1. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered as follows:

If to the Grantee, then to:

Grant County
Attn.: County Manager
P.O. Box 898
Silver City, New Mexico 88061

And if to the Finance Authority, then to:

New Mexico Finance Authority
Attn.: Chief Executive Officer
207 Shelby Street
Santa Fe, New Mexico 87501

The Grantee and the Finance Authority may, by written notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 10.2. Binding Effect. This Grant Agreement shall inure to the benefit of and shall be binding upon the Finance Authority, the Grantee and their respective successors and assigns, if any.

Section 10.3. Amendments. This Grant Agreement may be amended only with the written consent of the Finance Authority and the Grantee.

Section 10.4. No Liability of Individual Officers, Directors or Trustees. No recourse under or upon any obligation, covenant or agreement contained in this Grant Agreement shall be had against any member, employee, director or officer, as such, past, present or future, of the Finance Authority, or against any officer, employee, director or member of the Grantee, past, present or future, as an individual so long as such individual was acting in good faith and within the scope of his or her duties. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, employee, director or member of the Grantee or of the Finance Authority is hereby expressly waived and released by the Grantee and by the Finance Authority as a condition of and in consideration for the execution of this Agreement.

Section 10.5. Grantee Compliance. The Finance Authority shall not be responsible for assuring the Grantee's use of the Grant Amount or the Project for its intended purpose and shall have no obligation to monitor compliance by the Grantee with the provisions of this Grant Agreement.

Section 10.6. Severability. In the event that any provision of this Grant Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.7. Execution in Counterparts. This Grant Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.8. Applicable Law. This Grant Agreement shall be governed by and construed in accordance with the laws of the State.

Section 10.9. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Grant Agreement.

[Remainder of page intentionally left blank.]

[Signature pages follow.]

IN WITNESS WHEREOF, the Finance Authority, on behalf of itself, and as authorized by the Finance Authority Board of Directors on September 22, 2016, has executed this Grant Agreement in its corporate name with its corporate seal hereunto affixed and attested by its duly Authorized Officers; and the Grantee has caused this Grant Agreement to be executed in its corporate name and the seal of the Grantee affixed and attested by its duly Authorized Officers. All of the above are effective as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By _____
Chief Executive Officer or Designee

[SEAL]

ATTEST:

By _____

Approved for Execution by Officers of the
New Mexico Finance Authority:

By _____
Daniel C. Opperman, General Counsel

GRANT COUNTY

By Brett Kasten
Brett Kasten, Chairman

[SEAL]

ATTEST:

By Maria Castillo
Maria Castillo, County Clerk



EXHIBIT “A”

TERM SHEET

Grantee:	GRANT COUNTY
Project Description:	Preparation of a Planning Document consisting of the comprehensive plan addressing land use, housing, transportation, infrastructure, and economic development.
Total Grant Amount:	Twelve Thousand Five Hundred Dollars (\$12,500)
Local Match:	Thirty Seven Thousand Five Hundred Dollars (\$37,500)
Closing Date:	August 25, 2017

EXHIBIT "B"
FORM OF REQUISITION

RE: Twelve Thousand Five Hundred Dollars (\$12,500) Planning Grant Agreement (the "Grant Agreement") by and between the New Mexico Finance Authority ("Finance Authority") and Grant County ("Grantee"), Finance Authority Grant Number 3618PG (the "Grant Agreement").

Closing Date: August 25, 2017

TO: NEW MEXICO FINANCE AUTHORITY

You are hereby authorized to disburse funds from the Grant Account, with regard to the above-referenced Grant Agreement, the following:

REQUISITION NUMBER: _____

NAME AND ADDRESS OF PAYEE: _____

AMOUNT OF PAYMENT: \$ _____

PURPOSE OF PAYMENT: _____

WIRING INFORMATION

BANK NAME:	_____
ACCOUNT NUMBER:	_____
ROUTING NUMBER:	_____

Each obligation, item of cost or expense mentioned herein is for the Grant made by the New Mexico Finance Authority pursuant to the Grant Agreement to the Grantee, within the State of New Mexico, is due and payable, has not been the subject of any previous requisition and is a proper charge against the Grant Account held on behalf of the Grantee. All representations contained in the Grant Agreement and the related closing documents remain true and correct and the Grantee is not in breach of any of the covenants contained therein.

Capitalized terms used herein are used as defined or as used in the Grant Agreement.

DATED: _____

By: _____
Authorized Officer of the Grantee

Title: _____

EXHIBIT "C"

FORM OF CERTIFICATE OF COMPLETION

RE: Twelve Thousand Five Hundred Dollars (\$12,500) Planning Grant Agreement (the "Grant Agreement") by and between the New Mexico Finance Authority ("Finance Authority") and Grant County ("Grantee"), Finance Authority Grant Number 3618PG (the "Grant Agreement").

Closing Date: August 25, 2017

TO: NEW MEXICO FINANCE AUTHORITY

I, _____, the _____ of
[Name] [Title or position]

the Grantee, hereby certify as follows:

1. The project described in the Grant Agreement (the "Project") was completed and placed in service by the Grantee on _____, 20____.
2. The total cost of the Project was \$ _____.
3. The Project was completed and is and shall be used consistent with and subject to the covenants set forth in the Grant Agreement.

GRANT COUNTY

By: _____

Its: _____