

BUSINESS IMPROVEMENT DISTRICT ORDINANCE NO. 2009-1

WHEREAS, The City of Gallup is authorized pursuant to Section 3-63-1 et. seq. N.M.S.A. 1978 Comp. (as revised) to create a Business Improvement District for its Downtown area; and

WHEREAS, a petition to create said Business Improvement District has been presented to the City Council approved by more than fifty-one (51%) per cent of the property owners in a geographically defined area as allowed by State Statute; and

WHEREAS, a Planning Group appointed by the Mayor has recommended the creation of said Business Improvement District (BID) for Downtown Gallup; and

WHEREAS, a majority of the City Council has approved the subject BID proposal; and

WHEREAS, it would be appropriate to create a BID to promote and restore economic vitality to the central core of the Downtown Gallup business area and enhance commercial development which benefits the health, safety, and welfare of the citizens of Gallup;

IT IS THEREFORE ORDAINED that a Business Improvement District hereafter referred to as BID be and hereby is authorized to be created under the following terms and conditions:

1. The initial period of existence for the BID shall be from January 1, 2009, through December 31, 2011, when the viability of the BID shall be reviewed by the City Council and the BID shall continue, unless by majority vote of the City Council it determines to Repeal the within Ordinance, and if not repealed it shall continue through December 31, 2013;
2. The BID shall be administered by a nine (9) person Management Committee appointed by the Mayor with six (6) citizen members coming from a list of nominees submitted by the Planning Group of BID area property and business owners; and further consisting of

three (3) representatives from the City being one (1) member of the City Council and two (2) City Staff members; and six (6) citizens of the City of Gallup consisting of three (3) BID area property owners, one (1) BID area business owner, and two (2) at large members of the community. The citizen members of the Management Committee shall be appointed for initial terms of three (3) years with three (3) of those members continuing to serve two (2) additional years and the Mayor appointing three new members biannually thereafter. City members shall serve at the pleasure of the Mayor.

3. The area of the BID shall consist of boundaries being Historic Route 66 Avenue on the north, Hill Street on the south, the West Y on the west, and Cliff Drive on the east.

Attached hereto and incorporated by reference as Exhibit "A" of this Ordinance is a map defining the exact boundaries of the BID;

4. Each tract of commercial property within the BID area shall be subject to annual property assessments in the amount of 1% of the assessed value for said property under the 2006 real property tax assessment of said property as shown by the assessment of said property done by the Mc Kinley County Assessor's Office. Said assessments shall be mailed to each property owner within the BID area semi-annually the last week of each February and August with one-half (1/2) of the total annual assessment being due and payable to the City of Gallup on or before the 10<sup>th</sup> day of March and September of each year respectively. Should any property owner fail to remit the assessment when due, the unpaid amount shall constitute a lien on the subject property which may be foreclosed upon by the City as provided by State Law for the collection of amounts owed to the City under the State Municipal Code. The Office of the City Clerk shall

prepare and mail out the BID assessments. The Office of the City Clerk shall collect all payments received for BID assessments from the subject property owners and remit said funds to the City Finance Department for use in funding specific projects recommended by the BID Management Committee in accordance with the Ordinance;

5. The aforementioned assessment shall remain at the initial rate through the first five (5) years of the existence of the BID. Should the BID continue after its initial five (5) year period the assessment rate shall be re-determined biannually thereafter by the City Council on or before January 1 of each subsequent two (2) year period.
6. The City of Gallup shall match the money raised by the BID assessments on a dollar for dollar match semi-annually as actual assessment payments are received. The City shall segregate the BID assessment payments and its matching funds in a separate account to be used solely for BID purposes. The City shall not charge against its matching funds more than ten (10%) per cent of its annual match as in-kind services for administering the BID funds and providing other support for the BID project;
7. The assessments for the BID shall not be made on real property within the designated BID area which is owned by any governmental entity, is residential property, or is owned by any non-profit corporation;
8. The Management Committee of the BID shall submit to the City Council within one hundred twenty (120) days of the adoption of this Ordinance a plan for BID operation which shall include a list of proposed improvements to be made by the BID project, the estimated amount of benefit that each tract of commercial property within the BID shall have conferred upon it by the BID project, a legal description of each property to be

- assessed within the BID area along with the physical address of each property and the mailing address of the property owner as shown on the records of the Mc Kinley County Assessor's Office, the amount of the initial assessment on each subject property within the BID area, and the designation of a non-profit corporation such as Gallup BID, Inc. or another analogous corporate entity to receive BID funding to implement BID projects;
9. The Management Committee shall be responsible for the operation of the BID, it shall prepare and file with the City Council for approval by the Council an annual budget and progress report, it shall recommend any changes in the annual assessment for consideration by the Council, it shall file an annual report with the City Council showing a complete financial statement setting forth the BID's assets, liabilities, income, operating expenses, and detailing the benefits conferred by the BID projects to the property and business owners located with the BID area;
  10. The assessments made on commercial property within the BID area may be passed on by the subject property owners to their individual commercial tenants in an amount not to exceed seventy-five (75%) per cent of the total annual fee. If a subject property owner elects to pass on said portion of the BID annual assessment fee he shall notify in writing the City Clerk on or before February 20<sup>th</sup> of each year that the tenant shall be paying a portion of fee and the City Clerk shall send duplicate assessments to both the designated tenant and owner. Should the tenant fail to remit the assessment fee in a timely manner, the City Clerk shall notify the subject property owner in writing of said failure to remit and the subject property owner shall remit the full amount of the

assessment fee to the City Clerk with thirty (30) days of the mailing of the notice or the subject property shall have a lien placed upon it for collection;

11. It is the intention of the City to adopt by reference and incorporate into the within Ordinance all the definitions of terms set forth in Section 3-36-3 N.M.S.A. 1978 Comp. (as revised);
12. It is the intention of the City to allow the broadest discretion in the BID Management Committee to accomplish its goals, limited only by the express terms of the Business Improvement District Act Section 3-63-1 et.seq. N.M.S.A. 1978 Comp. (as revised) as that State Statute now exists or may be revised, and upon the further limitation that no BID project or program may duplicate services, projects, or programs of the City.
13. In addition to those powers conferred upon the BID by the within Ordinance, the BID is authorized to apply for and receive monetary grants from any source to supplement its funds generated by property assessments and City matching funds. Further, the BID is authorized pursuant to Section 3-63-12 N.M.S.A. 1978 Comp. (as revised) to issue revenue bonds from time to time in its discretion to finance the undertaking of any improvements within the BID area, including but not limited to the issuance of bonds to pay the costs of installation, acquisition, construction or reconstruction of any public facility within the BID area. The City shall have the power to issue refunding bonds for the payment or retirement of bonds previously issued by it pursuant to the BID Act. These bonds shall be made payable as to both principal and interest solely from the income, proceeds, revenues and funds of the City derived from or held in connection with its undertakings and carrying out of authorized improvements within the BID area

or for activities under the BID Act. Payment of these bonds, both as to principal and interest, may be secured by pledge of any loan, grant or contribution from the federal government or other source in aid of any improvements within the BID area and by a mortgage or pledge of any of the real property acquired within the BID area or otherwise pursuant to the authority granted by the BID Act. Bonds issued under this Ordinance shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of the BID Act are declared to be issued for an essential public and governmental purpose and the bonds and interest and income from them shall be exempted from all taxes. Bonds issued under this provision shall be authorized by a separate ordinance of the City Council for BID projects specifically authorized and approved by the City Council. Bonds issued hereunder may be issued in one or more series and shall bear a date or dates, be payable on demand or mature at a time or times, bear interest at a rate or rates not exceeding the legally authorized rate, be in a denomination or denominations, be in the form provided by the Supplemental Public Securities Act [6-14-8 to 6-14-11 N.M.S.A. 1978 Comp. (as revised)] as to registration, have rank or priority, be executed in a manner, be payable in a medium of payment at a place or places, be subject to the terms of redemption, with or without premium, be secured in a manner and have the other characteristics as may be provided by the resolution or trust indenture or mortgage issued pursuant thereto. The bonds or any portion of the bonds may be sold at not less than par at public sales held after notice

published prior to the sale in a newspaper having a general circulation in the area of operation and in any other medium of publication as the City Council may determine. The bonds may be exchanged for other bonds on the basis of par. The bonds may be sold to the federal government or to the state at private sale at not less than par, and, in the event less than all of the authorized principal amount of the bonds is sold to the federal government or to the state, the balance may be sold at private sale at not less than par at an interest cost to the City of not to exceed the interest cost the interest cost to the City of the portion of the bonds sold to the federal government. In the case of any public official of the City whose signatures appear on any bonds or coupons issued under the BID Act shall cease to be public officials before the delivery of the bonds, the signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until delivery. Any bonds issued pursuant to the BID Act shall be fully negotiable. In any suit, action or proceeding involving the validity or enforceability of any bond issued under the BID Act or the security therefor, any bond reciting in substance that it has been issued by the City in connection with authorized improvements within the BID area shall be conclusively deemed to have been issued for that purpose, and the project shall be conclusively deemed to have been planned, located and carried out in accordance with the BID Act.

14. Commercial property owners adjacent to the BID area boundaries shall be allowed to be included in BID projects as a "Friend of the BID" if they submit a written request to the BID Management Committee and pay the full amount of property assessment required of property owners within the BID area boundaries. Any property owner who becomes

a "Friend of the BID" must remain subject to the BID property assessment for a minimum of five (5) years. All provisions of this Ordinance which apply to BID area property owners shall be binding on a "Friend of the BID".

15. It is further Ordained that temporary provisions may be necessary for the initial implementation of the within Ordinance due to the timing of its consideration and enactment. Therefore, the initial time frames set forth herein for sending out of BID assessments, and the submission of the Management Committee's initial plan of operation may be extended for a period not to exceed one hundred twenty (120) days after passage.