

COUNTY OF DOÑA ANA GRANT AGREEMENT

THIS GRANT AGREEMENT is entered into by and between Doña Ana County as authorized by the Board of County Commissioners, hereinafter referred to as "the County", and Gadsden Independent School District hereinafter referred to as "the Grantee".

WHEREAS, the parties desire to contract with one another so that Grantee may continue to provide recreational program services for residents in Doña Ana County for fiscal year 2005-2006(July 1, 2005 through June 30, 2006); and,

WHEREAS, the County has the authority to fund the activities described herein to be performed by the Grantee, and wishes to assist with the funding of such activities to promote the health, safety or general welfare of the citizens of Doña Ana County; and,

WHEREAS, the Grantee has demonstrated an interest and an ability to perform the work described herein in its response to the County's notice and request for competitive funding proposals;

NOW THEREFORE, for valuable consideration, the parties mutually agree as follows:

1. SCOPE OF WORK

As a condition of the grant funding described in Article 3, below, the Grantee agrees that it will implement, in all respects, the activities outlined in the "Project Description", attached hereto as "**Attachment A**". The services rendered to the County in exchange for the funding will include volunteer and professional recreational services in the Gadsden area. The Grantee will use the funds granted to pay for operational costs including, but not limited to: salaries and benefits for recreation program staff plus supplies. The Grantee agrees to make no change in these services described in Attachment A, without first submitting a written request to the County and obtaining the prior written approval of the proposed change.

2. TERM OF GRANT AGREEMENT

- a. The term of this Grant Agreement shall be from July 1, 2005, through June 30, 2006. Funds granted shall not be rolled over from Fiscal Year to Fiscal Year. Any extensions shall be addressed through a new grant agreement for the next fiscal year.
- b. In the event that, due to unusual circumstances, it becomes apparent that this Grant Agreement cannot be brought to full completion within the time period set forth in paragraph A above, the Grantee shall so notify the County in writing at least thirty (30) days prior to the termination date of this Grant Agreement.
- c. In the event that, due to unusual circumstances, the Grant Agreement cannot be brought to completion due to fiscal constraints, as determined by the Board of County Commissioners and/or the County management, the County shall notify Grantee 30 days in advance that the Grant Agreement will be terminated.

3. GRANT FUNDING AND METHOD OF PAYMENT

- a. In consideration of the Grantee's agreement to perform the services required under the terms of this Grant Agreement to the satisfaction of the Board of County Commissioners, and in compliance with all other Grant Agreement requirements herein stated, the County

shall pay the Grantee a sum not to exceed forty thousand dollars (\$40,000.00). This amount shall not be exceeded without the approval of the Doña Ana County Board of Commissioners.

- b. The County will budget the amount of these funds and will provide payment totaling the amount awarded. Payment will be remitted based upon availability of funding and compliance with the terms of this Grant Agreement. It is estimated that funds will be available for the first payment on or before November 1, 2005.
- c. The funds specified in paragraph A, above, shall constitute full and complete payment of monies to be received by the Grantee from the County pursuant to this Grant Agreement. The funds are to be expended in accordance with the Attachment A, the Project Description. It is understood and agreed that the Grantee's expenditure of these monies shall not deviate from the Project Description without the prior written approval of the County.
- d. It is understood and agreed that if any portion of the funds received by the Grantee for the purpose designated herein are not spent by the term of this Grant Agreement, those funds shall immediately be refunded to the County.

4. REPORTS

- a. Year-to-Date Report: The Grantee shall submit to the County one (1) copy of a Year-to-Date Report showing all its activities towards the goals of the Project Description between the start of its performance under the Grant Agreement and March 15, 2006. This report will be due no later than April 1, 2006. Failure to submit a timely Year-to-Date Report will render the Grantee ineligible for any subsequent annual funding.
- b. Final Report: The Grantee shall submit to the County one (1) copy of a Final Report for this project due on or before June 30, 2006, describing Grantee's accomplishments towards the goals of the Project Description during the term of the Grant Agreement, the methods and procedures used, a detailed budget breakdown of expenditures, and a description of any problems or delays encountered. Failure to submit a Final Report will render the Grantee ineligible for any subsequent annual funding.

5. MODIFICATION, TERMINATION AND MERGER

- a. The County, by written notice to the Grantee, shall have the right to terminate this Grant Agreement at any time, if, in the judgment of the County, the provisions of this Grant Agreement have been violated or the activities described in the Project Description do not progress satisfactorily or based on a lack of funds availability. If this Grant Agreement is terminated, the Grantee shall refund all unspent funds that have been dispersed to the Grantee. The County's decisions to terminate the Grant Agreement and demand refund are final.
- b. Modifications of the terms and conditions of this Grant Agreement shall be made in writing and approved by the appropriate personnel with authority.

6. CERTIFICATION The Grantee hereby assures and certifies that:

- a. It has the legal authority to receive and expend the funds as described in this Grant Agreement.
- b. It will comply with the New Mexico Procurement Code, Section 13-1-30 through 13-1-199 NMSA (1978 Comp. as amended). All professional services, activities or programs provided through a contractor or subcontractor must be implemented through a professional service contract or subcontract. The Grantee will submit to the Doña Ana

County Grants Office of the Fiscal Services Department (hereinafter "Grants Office") copies of all project related contracts, subcontracts, and agreements for County review and approval prior to execution. All contracts, subcontracts and agreements shall incorporate by reference the terms of this Grant Agreement. Amendments to existing contracts, subcontracts and agreements also must be submitted to the County for review and approval prior to execution if so requested. In addition, any project related contract, subcontract, or agreement and related amendments executed prior to this Grant Agreement must be submitted for review and approval by the County if requested.

- c. It will adhere to any federal, state, and local law or regulation, including Finance, Purchasing and accounting regulations of the County.
- d. It will meet with the Grants Office prior to receipt of funds and will provide proof that two check endorsement signatories are acceptable to its bank for deposit in Grantee's account. This is needed to assure the County that funds checks are properly deposited.
- e. It will provide to the Grants Office, throughout the grant year, copies of all proposed expenditures; written County approval for each expenditure must be given prior to the expenditure.
- f. During the term of this agreement, it shall not utilize County services in its operations nor shall it utilize or convert any equipment or property acquired or developed pursuant to this Agreement for uses other than those specified in the Project Description, Attachment A, without the prior written approval of the County.
- g. The following persons shall not have any interest, direct or indirect, or any relation of consanguinity to the third degree, with any contract or subcontract, including any contractor, subcontractor, or the procurement thereof, for the performance of any part of the Project Description:
 - i. Member of the governing body of the Grantee, or other local public body involved in the Project Description;
 - ii. Member of the Grantee or same;
 - iii. Officer of the Grantee or same;
 - iv. Employee of the Grantee or same; and
 - v. Designee or agent of the Grantee or same.
- h. The Grantee agrees to incorporate, in all such contracts or subcontracts, an identical provision as this paragraph.
- i. The Grantee shall provide for strict accountability of all monies made subject to this Grant Agreement. The Grantee or its subcontractors shall maintain fiscal records, follow generally accepted accountability principles and account for all receipts and disbursements of funds transferred to the Grantee under this Grant Agreement. The Grantee shall provide immediate access to all such records to the County for the purposes of conditions an audit at the request of the County's Finance Director or its Grants Director.

7. RETENTION OF RECORDS The Grantee shall keep and preserve such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for a period of six (6) years from the termination of the Grant Agreement, the purpose of undertaking for which such funds were used, the amount and nature of all contributions from other sources, and such other records as the County shall prescribe.

8. CONFIDENTIALITY Any confidential information provided to or developed by the Grantee in the performance of this Grant Agreement shall be kept confidential and shall not be made

available to any individual or organization by the Grantee without the prior written approval of the County.

9. **ASSIGNMENT** The Grantee shall not assign or transfer any interest in this Grant Agreement or assign any claims for money due or to become due under this Grant Agreement without the prior written approval of the County.
10. **APPLICABLE LAW** This Grant Agreement shall be governed by the laws of the United States and of the State of New Mexico.
11. **LIABILITY** Each party shall be solely responsible for fiscal or other sanctions occasioned by its own violation or alleged violation of requirements applicable to the performance of this Grant Agreement. Each party shall remain liable for its actions in accordance with this Grant Agreement.
12. **INDEPENDENT CONTRACTOR** The Grantee is an independent contractor of the County. Nothing in this Grant Agreement is intended, or should be construed in any way, to create or establish a partnership relationship between the parties or to establish the Grantee as an agent, representative, or employee of the County for any purpose whatsoever. The Grantee, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the County and shall not bind the County in any respect. The Grantee and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County.
13. **SEVERABILITY** If any clause or provision of the Grant Agreement is held to be illegal, invalid or unenforceable, then it is the intention of the parties hereto that the remainder of the Grant Agreement shall remain in full force and effect. However, in the event that either party can no longer reasonably perform pursuant to the remaining Grant Agreement terms, or if the purpose of the Grant Agreement can no longer be carried out by either party, the Grant Agreement is voidable.
14. **NON-APPROPRIATION:** The County's obligation to make payment under the terms of this Agreement are contingent upon its appropriation of sufficient funds to make those payments. If the County does not appropriate funds for the continuation of this Contract, this Contract will terminate upon written notice of that effect to the Grantee. The County's determination that sufficient funds have not been appropriated is firm, binding and not subject to review.
15. **SUBCONTRACTING** The Grant Agreement is based on the personal skills and reliability of the Grantee. Except as may be provided for in Attachment A to this Grant Agreement, the Grantee shall not subcontract any portion of the services to be performed under this Grant Agreement without prior written approval of the County.
16. **TORT CLAIMS ACT** Neither this Grant Agreement nor any provision contained herein shall be construed as a waiver of any of the defenses or immunities granted by the New Mexico Tort Claims Act. Each party to this Grant Agreement shall be responsible, to the extent allowed by law, and within the limits of the New Mexico Tort Claims Act, for the acts and/or omissions of their respective employees and agents.

17. WORKER'S COMPENSATION ACT The Grantee agrees to comply with state laws and rules applicable to workers' compensation benefits for its employees. If the Grantee fails to comply with the Workers' Compensation Act and applicable rules when required to do so, this Grant Agreement may be terminated by the County.

18. EQUAL OPPORTUNITY The Grantee agrees to abide by state and federal laws and rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal employment opportunity. During and in relation to the performance of this Agreement, Grantee shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, veteran status, gender, pregnancy, or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The Grantee agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause. If the Grantee is found not to be in compliance with these requirements during the life of this Grant Agreement, the Grantee shall take appropriate steps to correct these deficiencies; otherwise the County may terminate the Grant Agreement.

19. LABOR LAWS The Grantee agrees to comply with all state and federal labor laws, including but not limited to the Federal Labor Standards Act, and agrees to indemnify the County for any penalties, fines, or other liabilities that may be assessed to the County based upon Grantee's failure to comply with state or federal labor laws.

20. PARTY REPRESENTATIVES The Grantee hereby designates the person listed below as the official Grantee Representative to be responsible for overall supervision of the approved project:

Linda Crooks
Gadsden Ind. School Dist.
P.O. Drawer 70
Anthony, NM 88021
Telephone: (505) 882-6200 Fax:(505) 882- 6229

The County hereby designates the person listed below as the County Representative authorized to receive reports from the Grantee as required herein, and to act for the County in responding to Grantee requests under this Grant Agreement, except as authority is specifically retained herein by the Board of County Commissioners to the Board or other County representatives:

Lurie P. Garcia	and copy to:	DAC Purchasing Department
Financial Services		Attn: Don Bullard
180 West Amador		180 West Amador, 3 rd Floor
Las Cruces, NM 88001		Las Cruces, NM 88001

21. COUNTERPART ORIGINALS This document shall be executed in no less than three (3) counterparts, each of which shall be deemed an original.

Attachment A

Grant Application Attachment II

This is the twenty-third (23) year that Gadsden Independent School District has requested funding for grant for recreation. In the early 1980's the Dona Ana County Commissioners realized that recreational opportunities were missing for the youth in Southern Dona Ana. The Commissioners recognized that the schools, playgrounds, ball parks, gymnasiums, and especially the swimming pool could be used for summer recreation. This program would be similar to the Las Cruces Summer Youth Program.

The Elementary Summer Recreation Program will compliment the Gadsden School District Summer School Academic Program. The students will attend academic classes from 8 a.m-12 p.m. At 12:30 p.m. the students will have the opportunity to participate in Summer Recreation Program at their school. The Program will also be integrated with Library (Incentive Reading Program), Computer Education, and Art or Music Education. This Summer Recreation Program encourages parents to participate in the activities with their children.

The Secondary Summer Recreation Program will be expanded to offer our youth opportunities to participate in seven (7) week program of weight training, tennis, volleyball, soccer, cheerleading, and basketball.

The foundation of the Summer Recreation is the swimming program. The Gadsden School District recently repaired and refurbished (\$256,000) the Gadsden High School pool. Students are given swimming lessons in the mornings and the pool is open to all residents in the afternoon at a minimal cost to swim. This summer we will add an adult water aerobic program in the evenings.